The Central Law Journal.

ST. LOUIS, DECEMBER 26, 1879.

DIGEST AND INDEX.

ABANDONMENT.

[See EMINENT DOMAIN; HOMESTEADS AND EXEMPTIONS.]

ABATEMENT.

Where suit has been brought against a defendant to recover for a quantity of coal converted, and before judgment had, the plaintiff dies, the suit can not be carried on and maintained by the widow, to whom the plaintiff has by will devised all his property, without taking out letters of administration. McLean County Coal Co. v. Long, 291.

An action for breach of promise of marriage will not survive against the personal representative of the promiser, 322.

Where the defendant in such an action dies after a verdict against him and after filing exceptions, the exceptions may be allowed, and if overruled judgment may be entered as of the day when the verdict was rendered, 323.

An action in tort for negligence or deceit will lie against the personal representative of a deceased wrongdoer. Tichenor v. Hayes, 470.

An action *ex delicto* was brought against the administratrix of a deceased attorney at law for negligence in the discharge of his duty, and in some of the counts deceit was charged: *Held*, that the action was sustainable. Ibid.

ABORTION.

In trial for, dying declarations of woman admissible, 38.

Indictment for the murder of the unnamed child of E, not the same as one charging the employment of certain means with intent to procure the miscarriage of E, 118.

ACCOMPLICE.

[See CRIMINAL EVIDENCE.]

ACCORD AND SATISFACTION.

A defense of accord and satisfaction is not supported by proof of a tender of satisfaction without proof that the tender has been accepted or received, 356.

ACKNOWLEDGMENT.

[See DEEDS.]

ACTION.

If a person who had agreed to make a loan refuses to do so, the borrower can not maintain an action of assumpsit against him to recover the money, although he executed a mortgage to secure the loan, and fully complied with the contract on his part. Conway v. Log Cabin etc. Assn. 85.

After recovery in suit against gas works for deterioration in value of plaintiff's property, second action can not be brought for continuing damage, 119.

A owned a field in which B had a stack of wheat which he had promised to remove in time to prepare the ground for sowing. A notified B to remove his wheat as he desired to burn the stubble. B failed to respond, the stubble was set on fire and A seeing it in danger of being destroyed removed it himself. *Held*, that A could not recover for his services, 323.

An action can not be maintained for a false and malicious prosecution of an ejectment suit, wherein the plaintiff failed to recover all he claimed, 421.

ADMINISTRATION.

[See EXECUTORS AND ADMINISTRATORS.]

ADMIRALTY AND MARITIME LAW.

To justify a sale of a cargo by a master it must appear that the sale was necessary, was made in good faith, and that the master was unable to communicate with the owners before the necessity became imperative, 75.

Imprudent navigation of tug occasioning necessity for assistance to ship in tow; former not entitled to salvage, 258.

Wages of vessel and crew recoverable under common counts where special contract remains unperformed, 276.

Vol. 9—No. 26.

ADMIRALTY AND MARITIME LAW—Continued.

The owner of a vessel injured by a collision is limited in his recovery to the value of the offending ship and her freight immediately subsequent to the collision, and has no lien or claim upon the insurance received by the owner. The Peshtigo, 285.

In case of actual total loss, no formal abandonment is necessary to entitle the owners to the benefits of the limited liability act. Ibid.

ADVERSE POSSESSION.

[See EJECTMENT.]

ADVERTISEMENT.

[See NOTICE.]

AFFIDAVIT.

[See PLEADING AND PRACTICE.]

AGENCY.

Courts recognize the commercial usage of buying and selling through brokers, without looking beyond them to the original parties, whereby the brokers stand in the place of principals. But a purchaser may elect to have the contract turned over to him instead of relying upon his broker, 76.

A broker who makes a purchase with the understanding, and with the concurrence of the seller, that the contract is to be at once turned over to his principal, ceases his connection with it on payment of his commission, 76.

Brokers who are paid a commission to buy goods are agents of those for whom they buy, 76.

Although a mortgage is left for record by the attorney for the mortgagee, yet if the attorney had no authority to do so, and the mortgagee never ratified the act, the latter is not bound by the mortgage. Conway v. Log Cabin etc. Assn., 85

When principal not bound by acts of agent, 177.

Where a principal becomes lunatic, after holding out an agent as having authority to contract on his behalf, he is liable on contracts made by the agent with a third person to whom such authority has been held out, and who has had no notice of the lunacy. Drew v. Nunn, 211, and see 197.

Where the lunacy of a principal is of so serious a nature as to render him incapable of contracting on his own behalf, it revokes an authority to contract for him previously given to an agent. Ibid.

A general agent for the sale of safes has no authority, merely by virtue of his agency, to warrant them burglar proof. Herring v. Skaggs, 229.

The receipt by the principal of the price of the safe which the agent sold and without authority warranted burglar-proof, will not amount to a ratification of the warranty, unless received or retained by the principal with knowledge of the warranty. Ibid.

An authority in an agent to arrest offenders, and to institute criminal proceedings, can only be implied where the duties which he has to perform can not be efficiently discharged for the benefit of his employer, unless he has power promptly to apprehend offenders on the spot, 238, and see 16.

Contracts "on Account of" or "on Behalf of" Another. Article from *Law Times*, 293.

Duty of broker on sale of real estate, 295.

A special agent, authorized to sell a horse, is not thereby authorized to warrant the quality on behalf of his principal. Cooley v. Perrine, 492.

An action to recover the price of a horse sold by a special agent, brought after it has ceased to be practicable to avoid the sale and restore the vendor and vendee to their original positions, *e. g.*, after the horse has died in possession of the vendee, does not constitute a ratification of an unauthorized warranty of quality made by such agent. Ibid.

Can a parol contract between principal and agent whereby agent is to sell principal's land, be enforced in equity, and can evidence of third parties who heard the parties separately ratify the contract be admitted? Query VII., 179; answer, 380.

AIR.

[See EASEMENTS.]

ALIMONY.

[See DIVORCE.]

AMENDMENTS.

[See PLEADING AND PRACTICE.]

ANIMALS.

Right to increase of animal conditionally sold, 335.

Owner is liable for treatment and keep of horse hired to another and which becomes sick or disabled while in his possession, 361

ANIMALS—Continued.

A and B own adjoining parcels of land, and upon the dividing line is situated a small lake. A has stocked this lake with fine fish. Can he enjoin B from taking the fish from his own side of the lake? Query, 239; answer, 340.

ANSWER.

[See PLEADING AND PRACTICE.]

APPEALS AND APPELLATE PROCEDURE.

[See, also, CRIMINAL LAW AND PROCEDURE; JUSTICE OF THE PEACE.]

Where a case was tried at one term before a jury, verdict returned and a motion for a new trial duly filed, and such motion was continued to a subsequent term, and then upon hearing overruled and time given in which to make a case: *Held*, that the exceptions to the proceedings on the trial, though first reduced to writing at the time of making the case, and after the close of the trial term, were in time, and must be considered in appellate court. Denny v. Faulkner, 32.

Damages on appeal only awarded when appeal is without merit, 76.

On appeal from Illinois Appellate Court to Supreme Court, latter can only consider questions of law, 159.

Where a judgment is taken for too large an amount in the court below, and the excess is cured by a *remittitur* in appellate court, the party entering the *remittitur* must pay all costs incurred in latter court up to the time of entering the *remittitur*, 158.

Direct appeal allowed from county to Supreme Court in election cases (Ill.), 218.

The right of membership in the board of trade, an organization for the transaction of commercial business, is not a "franchise" in the strict sense in which that term is used in the Illinois statute, and therefore an appeal does not lie from the circuit court directly to the Supreme Court, in a case where such a right is involved. Board of Trade v. People, 224.

Certificate of appellate court as to findings, (Ill.) 237.

When interest on the amount of a verdict is given and included in the judgment, such interest must be taken into account in considering whether the amount at issue reaches the limit allowed for an appeal, 258.

Appeal from Appellate to Supreme Court (Ill.), does not lie in forcible detainer, 399.

Points not made on original argument of case not allowed on rehearing, 437.

Where a party to a judgment dies before the commencement of proceedings in error, one who becomes a privy to the judgment by operation of law, may file a petition in error without being first made a party by revivor, 439.

ARBITRATION AND AWARD.

Where private matters are submitted to arbitration and award all the arbitrators must concur in the award; *aliter* where the submission is of a public nature, 122.

The power "to settle" on an assignment of a complainant's interest in a contract, does not authorize the assignee to include in it a general arbitration of all matters in difference between him and the other party to the contract, 294.

ARBITRATORS.

[SEE ARBITRATION AND AWARD.]

ARCHITECT.

Action will not lie by builder against architect for "knowingly and negligently" certifying to less work than was done. Stevenson v. Watson, 68.

ARREST.

The privilege from arrest extends to all cases in their nature judicial, whether taking place in court or not. People v. Judge of Superior Court, 8.

A motion for a discharge is a suitable proceeding to avoid an arrest that is voidable as a breach of privilege. Ibid.

Although one arrested under civil process of the United States Circuit Court is legally entitled to give bail to the marshal in the county of his residence, yet if he accompanies the marshal to a city in another county where the process is returnable, his presence there must be considered compulsory. Ibid.

One arrested on civil process of the United States Circuit Court and taken from his home into another county to the place of holding court, is privileged, upon his discharge after giving appearance bail to the marshal, from arrest under the civil process of a local court which could not have reached him had not the former process brought him within the jurisdiction. Ibid.

Appellate Court will interfere by *mandamus*. Ibid

ARREST—Continued.

A citizen of one State who comes into another voluntarily and without a subpœna, for the purpose of giving evidence in a suit pending there, can not be arrested on a *ca. sa*, 261.

ARSON.

On indictment for, proof that defendant has been guilty of forgery and larceny not admissible, 480.

ASSAULT.

What constitutes an, 198.

Assaults on the Police in the Execution of their Duty. Article from *London Law Times*, 353.

Construction of terms "assault" and "battery," 474.

ASSESSMENTS.

[See TAXATION.]

ASSIGNMENT.

Assignor of chose in action not liable for illegal and unauthorized acts of assignee in his name, 216.

ASSIGNMENT FOR BENEFIT OF CREDITORS.

An assignment of future profits for the benefit of creditors, as where an agricultural society assigned the proceeds of a fair about to take place on their grounds, is void, as against the lien of an execution issuing before the payment of such proceeds to the creditors, 419.

ATTACHMENT.

In action for wrongfully issuing, plaintiff must show that it was vacated or that he had opportunity to vacate it, 17.

A debt due to a co-partnership is not liable to attachment at the suit of a creditor of one of the partners, where the partnership is a continuing one, and where there has been no adjustment of the partnership affairs. Peoples Bank v. Shyrock, 327.

The tangible effects of a partnership are liable to attachment and sale for the individual debt of a partner. Ibid.

The proceeding of attachment in this State is essentially a legal proceeding, and in no way appropriate to ascertain and settle the equitable rights between the garnishee and defendant, as to ascertain, by adjusting the partnership affairs, the true interest of the defendant in the fund attached. Ibid.

Bona fide sale by debtor no ground for attachment, 338.

Several attachments; priority of, 341.

ATTEMPTS.

[See CRIMINAL LAW AND PROCEDURE.]

ATTORNEY AND CLIENT.

Client liable for fees of assistant counsel, when, 58.

Privileged communications between attorney and client, 81.

Attorney refusing when ordered by court to defend prisoner without compensation guilty of contempt, 100.

Payment to associate counsel when binding on client, 116.

An attorney can not abandon a case because fees due to him in another case have not been paid, 160.

Real estate agency not a "professional employment" within statute applying to cases of contract liability incurred through "some misconduct or neglect in office or in some professional employment," 276.

Attorney appointed by court to defend pauper prisoner can not recover compensation therefor from county, 401.

The contract of an attorney for services as such, whether to be rendered before a court, a department of the government or a legislative body, is valid, 475.

The contract of a lobbyist, for his services as such, is against public policy, 475.

AWARD.

[See ARBITRATION AND AWARD.]

BAILMENTS.

[See COMMON CARRIERS; PLEDGE.]

BANKRUPTCY.

The bankruptcy court has exclusive jurisdiction of suits to determine an assignee's right to property where the exemption is disputed under the exemption clause of the bankrupt law, 38.

An assignee in bankruptcy, like a sheriff levying execution, is entitled to at least temporary control of exempted property until it can be set apart from the rest, 38.

When the assignee has sold property, his authority as assignee ceases, and his neglect to deliver it is a personal breach of duty, not official, 38.

BANKRUPTCY—Continued.

The State courts have no power to set aside a sale made by an assignee in bankruptcy for fraud or other cause, either before or after the discharge of the assignee, 77.

A composition in bankruptcy does not discharge the lien created by an attachment of the bankrupt's property, unless the estate has been conveyed to an assignee, 299.

Sale of land by assignee in bankruptcy a "judicial sale;" wife of bankrupt entitled to dower, 318.

BANKS AND BANKING.

Where bankers hold security given them by customers for the payment of any balance on account current or otherwise, and, in the ordinary course of business while holding such securities, they discount bills which have been accepted or indorsed by those customers, they are not bound to apply the security in discharge of the liability of such customers on the bills, but may deal with it without reference to those transactions, 21.

The ordinary relation between a banker and his customer, as respects money deposited by the latter with the former, is that of debtor and creditor; but on the special circumstances of this case, the relation between the two, as respects a specified sum of money remitted by the banker at the request of the customer to another bank to pay a specified debt of the customer, was held to be that of principal and agent, or trustee and *cestui que trust*, and not that of debtor and creditor. City of St. Louis v. Johnson, 91.

Vote of the board of investment of a savings bank to sell certain notes held by it, does not authorize its treasurer so to indorse them as to impose the liability of indorser upon the bank, 115.

Authority to indorse is not to be inferred from the nature of the office of treasurer of a savings bank, 115.

Face of bank bill is not evidence of the date of its issue, 116.

Power of national banks to purchase negotiable paper. Atlas Nat. Bk. v. Savery, 227.

Payment by savings bank to one fraudulently presenting depositor's book, 236.

Application by bank of depositor's account to payment of his notes. National Mahaiwe Bk. v Peck, 369.

Bank empowered to discount negotiable notes has power to purchase such notes, 419.

A bank is liable on a check certified by it whether the drawer had sufficient funds or not, and when the holder procures it to be certified, this operates as payment of the debt for which the check was drawn, and the drawer is released from liability, 419.

BEQUESTS.

[See WILLS.]

BIGAMY.

Will a judicial proceeding establishing a marriage in a civil suit conclude the defendant on trial for bigamy? Query, 460; answer, 500.

BILLS AND NOTES.

[See NEGOTIABLE AND ASSIGNABLE PAPER.]

BILLS OF EXCEPTION.

[See APPEALS AND APPELLATE PROCEDURE.]

BILLS OF LADING.

[See also COMMON CARRIERS.]

Bills of lading, properly indorsed, are symbols of the property covered by them, serving all the purposes of actual possession, and so remain until there is a valid and complete delivery of the property to some person entitled to the possession under the bills of lading, 141.

BILLS OF SALE.

[See SALES.]

BONDS.

[See MUNICIPAL BONDS; SURETYSHIP AND GUARANTY.]

BOOK NOTICES.

Abbott's United States Digest, Vol. 9, 239.
American Reports, Thompson, Vol. 26, 79; Vol. 27, 418.
Application of Payments, Munger, 499.
Benjamin's Examination Questions, 480.
Berry's Missouri Appeal Reports, Vol. 5, 200.
Bicknell & Hawley's Nevada Reports, Vol. 13, 200.
Bigelow's Elements of Equity, 339.
Bradwell's Illinois Appellate Court Reports, Vol. 3, 159.
British Quarterly Review, 119.
California Reports, Vol. 52, Tuttle & Carpenter, 139.
Chancery Precedents, Dickenson, 59.
Chaney's Michigan Reports, Vol. 40, 549.

BOOK NOTICES—Continued.

Conover's Wisconsin Reports, Vol. 46, 459.
Constitutional History of the United States. Von Holst, 70.
Criminal Law and Procedure, Moore, 99.
" Pleading, Principles of, Heard, 339.
Damnum Absque Injuria, Weeks, 379.
Daniel on Negotiable Instruments, 99.
Dickenson's Chancery Precedents, 59.
Digest, Fisher's Jacob, Vol. 1, 260.
" of Evidence, Stephens', Reynolds, 480.
" United States, Vol. 9, Abbott, 239.
Elements of Equity, Bigelow, 339.
Equity, Elements of, Bigelow, 339.
Estee's Pleading and Practice, 78.
Evidence, Stephens' Digest of, Reynold's, 480.
" Wharton on, 2d Ed., 219.
Examination Questions, Benjamin, 480.
Fisher's Digest, Jacob, Vol. 1, 260.
Gallaudet's Manual of International Law, 79.
Heard's Principles of Criminal Pleading, 339.
Hotel Life, Law of, Rogers, 419.
Illinois Appellate Court Reports, Vol. 3, 159.
" Laws of, 119.
International Law, Manual of, Gallaudet, 79.
Jackson and Jackson, Texas Court of Appeals Reports, Vol. 9, 39.
Jacob's Fisher Digest, Vol. 1, 260.
Jones on Mortgages, 2d edition, 219.
Land Laws, Leading Cases on, Lewis, 19.
Laws of Illinois, 119.
Leading Cases on Land Laws, Lewis, 19.
Lewis, Leading Cases on Land Laws, 19.
Manual of International Law, Gallaudet, 79.
Michigan Reports, Vol. 40, Chaney, 459.
Missouri Appeal Reports, Vol. 5, Berry, 200.
" Revised Statutes of, Winslow, 419.
Mitchell's, Williams on Real Property, 5th ed. 499.
Moore's Criminal Law and Proce dure, 99.
Mortgages, Jones on, 2d edition, 219.
Munger on Application of Payments, 499.
Negotiable Instruments, Daniel, 99.
Nevada Reports, Vol. 13, Bicknell & Hawley, 200.
Otto's United States Report, Vol. 7, 119, Vol. 8, 459.
Payments, Application of, Munger, 499.
Pleading and Practice, Estee, 78.
" Criminal, Principles of, Heard, 339.
Principles of Criminal Pleading, Heard, 339.
Real Property, Williams, 5th edition, Mitchell, 499.
Reports, American, Vol. 26, 79, Vol. 27, 418.
" California, Vol. 52, Tuttle & Carpenter, 139.
" Illinois Appellate Court, Bradwell, Vol. 3, 159.
" Michigan, Vol. 40, Chaney, 459.
" Missouri Court of Appeals, Vol. 5, Berry, 200.
" Nevada, Vol. 13, Bicknell & Hawley, 200.
" Texas Court of Appeals, Vol. 9, Jackson & Jackson, 39.
Reports, United States, Otto, Vol. 7, 119, Vol. 8, 459.
" Wisconsin, Vol. 46, Conover, 459.
Reynold's Stephen's Digest of Evidence, 480.
Rogers' Law of Hotel Life, 419.
Speeches, Webster's, Whipple, 299.
Southern Law Review, 419.
Statutes of Missouri, Winslow, 419.
Stephens' Digest of Evidence, Reynolds, 480.
Student's Guide to Elementary Law, Benjamin, 480.
Texas Court of Appeals Reports, Vol. 5, Jackson & Jackson, 39.
Thompson's American Reports, Vol. 26, 79; Vol. 27, 418
Tuttle & Carpenter's California Reports, Vol. 52, 139.
United States Digest, Vol. 9, Abbott, 239.
" " Reports, Otto, Vol. 7, 119; Vol. 8, 459.
Von Holst's Constitutional History of the United States, 79.
Webster's Speeches, Whipple, 299.
Weeks on Damnun Absque Injuria, 379.
Wharton on Evidence, 2d Ed., 219.
Whipple's Webster's Speeches, 299.
Williams on Real Property, 5th Ed., Mitchell, 499.
Winslow's Revised Statutes of Missouri, 419.
Wisconsin Reports, Vol. 46, Conover, 459.

BREACH OF PROMISE OF MARRIAGE.

[See CONTRACTS.]

BROKERS.

[See AGENCY.]

BUILDING ASSOCIATIONS.
[See CORPORATIONS.]
BURDEN OF PROOF.
[See EVIDENCE.]
CARRIERS.
[See COMMON CARRIERS.]
CERTIFICATE OF DEPOSIT.
[See NEGOTIABLE AND ASSIGNABLE PAPER.]
CHANCERY.
[See JURISDICTION.]
CHANCERY PRACTICE.
[See PLEADING AND PRACTICE.]
CHARITABLE BEQUESTS.
[See WILLS.]
CHARITABLE TRUSTS.
[See TRUSTS AND TRUSTEES.]
CHATTEL MORTGAGE.
[See MORTGAGE.]
CHECK.
[See BANKS AND BANKING; NEGOTIABLE AND ASSIGNABLE PAPER.]
"CIVIL DAMAGE" LAWS.
Husband killed by locomotive while intoxicated; owner of premises where liquor sold liable in damages therefor, 45, 296.
Practice in actions under, 77.
Evidence in actions under, 298.
In action for injury to means of support, damages resulting from death can not be recovered, 298.
CIVIL RIGHTS.
[See COMMON CARRIERS.]
COMMON CARRIERS.
[See also NEGLIGENCE.]
Delivery of freight; furnishing expense bill to wrong party, 18.
Delivery of bill of lading containing limitation of liability after goods shipped, 98.
A bill of lading limiting the common law liability of the carrier is binding on the consignor whether read by him or not, 101.
A carrier of goods is not liable as a common carrier, unless he is under a legal obligation to accept the goods and carry them, and would be subject to an action for a refusal to do so. But he would not be subject to an action unless he had expressly and publicly offered to carry for all persons indifferently, or had by the conduct of his business held himself out as ready to carry for all. Varble v. Bigley, 153.
The owners of steamboats engaged in the business of towing are not common carriers. Ibid.
Doctrine that a bill of lading is both a receipt and a contract illustrated, 201.
Three bales of furs were delivered to an express company for transportation, the receipt given by the company limiting its liability to $50 for any loss or damage to any box, package or thing, unless the just and true value thereof was therein stated: *Held*, that the shipper, even though no disclosure of value had been given, was entitled to recover $50 on each of the three bales. Boskowitz v. Adams Ex. Co., 389.
The receipt whose conditions the company relied on in this case was a blank of the United States Express Company and was prepared by the plaintiff's bookkeeper, the word "Adams" being written in place of "United States." The goods were described but not valued. Among the conditions was one providing that the United States Express Company would not be liable for more than $50 on each package, unless the true value was stated. *Held*, that the receipt construed literally was not a contract between the parties, and that it was error to declare as a matter of law that it was to be read as though the words, "United States" were not in it. Ibid.
To overcome the valuation clause in an express receipt, the plaintiff offered to prove that the defendant, through its agents, had solicited his patronage on the same terms as other companies, viz., that the goods in which he dealt should be taken on non-valuation rates, which offer the court rejected. *Held*, error. Ibid.
Assent of the shipper to the terms of a receipt in derogation of the carriers liability, is a question of fact for the jury under all the circumstances of the case. Ibid.
COMMON CARRIERS—Continued.
An express company, notwithstanding a contract made with a shipper in limitation of its liability as a common carrier, is liable for loss or damage caused by the negligence of a railroad company, or its agents employed by it. The failure of the railroad company to use the most improved platforms is negligence of this character. Ibid.
Congress has enacted no law which forbids inter-State common carriers by water or land from regulating the business of their vessels or vehicles in such manner that the accommodations for colored passengers on their respective conveyances may be distinct and separate from those assigned to white passengers. Colored persons are, however, entitled to accommodations as suitable as those designated for the exclusive use of white passengers. Green v. The City of Bridgeton, 206.
A colored woman went on board a steamboat and took her position as a passenger on the upper deck aft, a portion of the boat assigned to the exclusive use of white passengers. She was directed by one of the officers of the boat to the cabin on the lower deck, a place affording substantially the same accommodations as the place where she then was, but designed especially for colored people. She refused to do so, and tendered the customary fare, which was declined. Having been threatened that she would be put off the boat at the next landing place if she persisted in remaining where she was, she voluntarily left the boat at such landing place. *Held*, that she had no cause of action for such exclusion. Ibid.
Can not limit liability by notice, 235.
Regulation that damages must be assessed before goods leave station and claim for loss be made within thirty days, unreasonable, 235.
Liability of, under special agreement, 375.
It is competent for a passenger carrier, by specific regulations distinctly brought to the knowledge of the passenger, which are reasonable and not inconsistent with any statute or its duties to the public, to protect itself against liability, as insurer, for baggage exceeding a fixed amount in value, except upon additional compensation proportioned to the risk. New York Cent. R. Co. v. Fraloff, 432.
As a condition precedent to any contract for the transportation of baggage, the carrier may require information from the passenger as to its value, and demand extra compensation for any excess beyond that which the passenger may reasonably demand to be transported as baggage under the contract to carry the person. Ibid.
The carrier may be discharged from liability for the full value of the passenger's baggage, if the latter, by any device or artifice, puts off inquiry as to such value, whereby is imposed upon the carrier responsibility beyond what it is bound to assume in consideration of the ordinary fare charged for the transportation of the person. Ibid.
In absence of legislation or special regulations by the carrier, or of conduct by the passenger misleading the carrier as to value of baggage, the failure of the passenger, unasked, to disclose the value of his baggage is not, in itself, a fraud upon the carrier. Ibid.
To the extent that articles carried by a passenger for his personal use when traveling exceed in quantity and value such as are ordinarily or usually carried by passengers of like station and pursuing like journeys, they are not baggage for which the carrier, by general law, is responsible as insurer. Ibid.
Section 4281 of the Revised Stats. (U. S.) has no reference to the liability of carriers by land for the baggage of passengers. Ibid.
A carrier of animals is subject to the responsibilities of a common carrier, except as to damages caused by the conduct or propensities of the animals, 419.
COMPOSITION.
[See BANKRUPTCY.]
CONDITIONAL SALES.
[See SALES.]
CONDITIONS.
[See DEEDS.]
CONDUCT OF TRIAL.
[See PLEADING AND PRACTICE.]
CONFLICT OF JURISDICTION.
[See JURISDICTION.]
CONFLICT OF LAWS.
Whatever goes to the form, manner of execution, and all other matters affecting the validity of the instrument as a contract *inter partes*, is settled by the law of the State where the contract is entered into; yet where such contract is made concerning personal

CONFLICT OF LAWS—Continued.
property situated in another State, the latter may without violating any of the obligations of comity, uphold its own laws concerning the effect of such a contract upon the rights of third parties domiciled within such States. Denny v. Faulkner, 32.
In enforcing remedies, the *lex fori* governs. Ibid.
Is a judgment founded on statute of limitation of one state a bar to same action in other States where said action is not barred. Query VIII, 488; answer 20.
In the construction of contracts, any interpretation or construction applicable or incidental to their performance should be governed by the law of the place of performance, while such as go to their execution or validity should be determined by the law of the place where they are made. Howenstein v. Barnes, 48.
A paper writing for the payment of money in Missouri was executed in Kansas. By the law of Missouri such writing was not negotiable; by the law of Kansas it was: *Held*, that the paper was negotiable. Ibid.
A promissory note written in Maine, but signed in Massachusetts by citizens there, and then returned by mail to the payee in Maine, is a note made in Maine and to be construed by the laws thereof, 98.
Where one of the makers of such note, thus written and signed, was a married woman, who signed it as surety for her husband, and by the laws of Massachusetts she could not thus bind herself there, the note is to be construed by the laws of Maine, which authorize her to contract for any lawful purpose, 98.
A note purporting to have been executed in Missouri, but delivered and consideration received in Iowa, is an Iowa contract, and governed by the laws of that State relating to usury, 416.
Promissory note governed by law of place where made and payable, 495.

CONSIDERATION.

[See CONTRACTS; NEGOTIABLE AND ASSIGNABLE PAPER.]

CONSPIRACY.

A conspiracy to slander a person by charging him with a criminal offense is indictable. State v. Hickling, 406.
M and seventeen others employed by R as journeymen tailors, conspired together to stop work simultaneously and return their work in an unfinished condition. This intention they carried out, and R was damaged in losing the money which he would have received from the completed garments, as well as by the loss of customers and the injury to the character of his house for punctuality. *Held*, that the facts constituted a good cause of action against M and his associates. Mapstrick v. Ramage, 485.

CONSTITUTIONAL LAW.

Minnesota law requiring ballots to be indorsed by judges of election unconstitutional, 58.
Marriage is not affected by the clause of the Constitution forbidding a State from passing any laws impairing the obligation of contracts, 56.
An act of the State of Oregon authorized the adoption of text books for the use of the common schools of the State by a majority of the votes of the county superintendents, to be canvassed and declared by the board of education, and provided that the books so adopted should be exclusively used in such schools for the period of four years thereafter. *Held*, that such act did not constitute a contract with the publishers of the adopted books by which the State was bound to use the same in its schools for said period, nor authorize the board of education to make any contract with such publishers on behalf of the State, concerning the furnishing and use of said books, 81.
Ordinance of San Francisco requiring the queue's of Chinamen committed to jail to be clipped unconstitutional, 142.
Retroactive Laws Affecting Individual Liability of Stockholders. Article by W. P. Wade, Esq., 143.
A statute which authorizes a board of equalization to impose a penalty of treble the amount of taxes on one furnishing a false list of his property with fraudulent intent to the assessor, after due notice to appear and defend against the charge, does not violate those provisions of the Constitution securing to every person a "trial by jury," and "due process of law," before being deprived of life, liberty or property, State v. Moss, 165.
Constitutionality of State law as to carriage of Texas cattle, 179.
Michigan statute as to formation of corporations for missionary and scientific purposes, unconstitutional, 217.
Effect of repeal of limitation laws, 221.

CONSTITUTIONAL LAW—Continued.
A prisoner, on his trial, may, with the consent of the State and court, waive the benefit of the constitutional provision that "the right of trial by jury shall remain inviolate" by consenting to be tried by a jury of less than twelve. State v. Kaufman, 313.
Whether a prisoner may, with the consent of the State and court, waive a trial by jury altogether, *quære*. Ibid.
Statute imposing a penalty upon livery stable keepers giving credit to undergraduates of college without consent of its officers, unconstitutional, 323.
Rhode Island statute which, subject to certain exceptions, prohibits the sale of any merchandise within one mile of the place where a religious society is holding an out-door meeting, unless the society consents to the sale, is a police regulation, and constitutional. State v. Read, 346.
Wisconsin statute rendering railroad companies liable for injuries to servants valid, 358.
Where a State by its system of taxation does not entrench upon the legitimate authority of the general government, or violate any right recognized or secured to the citizens by the Constitution of the United States, the Supreme Federal Court, as between the citizen and his State, can afford no relief against State taxation, however unjust, oppressive or onerous it may be. Kirtland v. Hotchkiss, 445.
The Constitution of the United States does not prohibit a State from taxing, in the hands of one of its citizens a debt held by that citizen upon a resident of another State, such debt being evidenced by the bond of the debtor, and the payment being secured by deed of trust or mortgage upon real estate situated in the State in which the debtor resides. Ibid.
Discrimination in State procedure against non-residents not unconstitutional, 495.
The statutes of the United States providing for the registration in the patent office of any device in the nature of a trade mark, to which any person has by usage established an exclusive right, or which the person so registering intends to appropriate by that act to his exclusive right, and making the wrongful use of a trade mark so registered by any other person without the owner's permission a cause of action in a civil suit for damages (act of July 8, 1870) and punishing by fine and imprisonment the fraudulent use, sale and counterfeiting of trade marks registered in pursuance thereof (act of August 14, 1876) are unconstitutional. United States v. Steffens, 449.
The said legislation is not authorized by that clause of the Constitution giving power to Congress "to promote the progress of science and useful arts, by reserving for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Art. 1, sec. 8, cl. 8. A trade mark is neither a "writing" nor a "discovery." Ibid.
Neither is said legislation authorized by the clause in the Constitution granting to Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Art. 1, Sec. 8, cl. 3. Ibid.
Whether a trade mark bears such a relation to commerce in general terms as to bring it within Congressional control when used or applied to the classes of commerce which fall within that control, not decided. Ibid.
Franchise granted to lottery by Indiana Territorial legislature could not be impaired by subsequent Constitution or statute, 479.

CONSTRUCTION.

[See INTERPRETATION; MUNICIPAL BONDS; STATUTES.]

CONTEMPT.

Power of notary public to commit for, 16.
Attorney refusing to defend prisoner without compensation, after so commanded by the court, guilty of, 100.
Imprisonment for indefinite time improper, 438.

CONTINUANCE.

[See PLEADING AND PRACTICE.]

CONTRACTS.

[See, also, SALES.]

A promise to marry made by a person physically and incurably impotent is contrary to the statutory policy of the State, and its breach will not constitute a cause of action. Gulick v. Gulick, 5.
An agreement was entered into by creditors of an insolvent corporation with a third party, "and with each other," to sell and assign their claims respectively to said third party for twenty-five cents on the dollar for each dollar of their claims. The plaintiff, who was a creditor, before signing the agreement, exacted and received as a consideration for his signature, an indorsed note for a sum in addition to the

CONTRACTS—Continued.

twenty-five cents stipulated for. In a suit on the note: *Held*, that the consideration was illegal, and the contract void. Bastian v. Dreyer, 49.

Rescission of contract; when tender of consideration received necessary, 56.

Purchase and sales of stock on margins are mere gambling devices and will not be enforced, 75.

Legality of commercial transaction, a question of fact depending on intention of parties, 76.

If one of the parties to a bargain of sale contemplates an actual sale, the transaction may be perfectly valid irrespective of any illegal purpose entertained by the other, 76.

A contract can not be a gambling contract, unless both parties concur in the illegal intent, 76.

Where a commercial "operation" is a purely gambling transaction, and understood to be so by both parties, neither can sue the other on it, 76.

Where an actual purchase is contemplated and the parties act in good faith, the fact that speculation is the object is of no legal importance, 76.

It is lawful to buy merchandise for future delivery, even if at the time of purchase the seller has none to deliver, 76.

Sales on the corn exchange, even for immediate delivery, do not necessarily contemplate the delivery of a specific lot, but only for the amount, kind and quality bargained for, 76.

One who sells for immediate delivery must be ready to deliver on call, and if he disqualifies himself from so doing by selling to another, the original purchaser can claim damages for conversion, or repudiate the sale and demand the property, 76.

A contract is binding upon the proposer as soon as a letter of acceptance, properly directed to him, has been posted by any person to whom the proposal has been made, notwithstanding such letter never reaches him, provided that there is no unreasonable delay in accepting the proposal, and that the ordinary and natural mode of transmitting the acceptance is through the post. Household etc. Ins. Co. v. Grant, 89, 271.

A, who resides at Swansea, handed a written application for one hundred shares in the B company to the manager of the company, on the 30th of September. On the 20th of October, the B company, whose office was in London, posted a letter of allotment of one hundred shares to A, directed to the address at Swansea that A had given in his form of application. This letter of allotment never reached A. *Held*, that in an action by the B company against A for the amount of a call due in respect to the one hundred shares allotted to him, that A was liable to pay the call. Ibid.

A, a wholesale milliner in Peoria, writes to B in Monmouth to engage the latter to do millinery work, and asks B to answer by return mail. B at once answers accepting, but the letter is not posted until two days thereafter. In the meantime A having received no reply as requested, makes efforts to secure another milliner, and failing to do so makes efforts to find B in Monmouth, but is unable to do so. B's letter of acceptance then comes to hand. A, after receiving same, leaves for Chicago and engages another milliner. B now brings suit for breach of contract. *Held*, that B having failed to accept by return mail there is no contract. McClay v. Harvey, 145.

Promise made by county of bounty for enlistment made after enlistment, not binding, 218.

Contracts "on Account of" or "on Behalf of" Another. Article from *Law Times*, 293.

In the absence of a statute authorizing it, a contract made in advance for interest upon overdue instalments of interest—*i. e.*, compound interest is void, 321.

A resolution of appointment is not a contract and may be withdrawn or altered before acceptance, 459.

Can an action be maintained for price of goods sold for immoral use? Query, 39; answers, 60, 80.

CONVERSION.

[See, also, MORTGAGES.]

Action for, can not be maintained where the goods alleged to have been converted have been consigned by the plaintiff to a third person to be paid for as they were sold by him, 56.

Agent entrusted with wheat to hold and sell, when directed by his principal, and to account for the proceeds, liable for conversion in case he wrongfully refuses to sell or to account when directed, but unlawfully retains possession against the wishes of principal, 97.

By one of several tenants in common, 116.

When demand unnecessary, 337.

CORPORATIONS.

Not liable to action for malicious prosecution, 16.

Liability of stockholders in, 16.

Where it is attempted to organize a corporation under the statute of Massachusetts of 1866, ch. 200, but the organization is never completed through failure to comply with the requirements of the law, officers of the inchoate corporation, who, in anticipation of the completion of the organization, carry on business in its name and for its benefit, are not partners with the subscribers to the stock or articles of association. Ward v. Brigham, 45.

Construction of a subscription to capital stock, 97.

Insurance companies have the power to take and hold negotiable notes and other securities in the general conduct of their business, and this includes the power to negotiate them. Alexander v. Horner, 111.

Action against directors for attempted purchase of stock which corporation afterwards repudiated, 115.

Retroactive Laws Affecting Individual Liability of Stockholders. Article by W. P. Wade, Esq., 143.

The personal liability of directors and officers of corporations for indebtedness exceeding the capital stock, can be enforced only by the creditors as a whole, and not by an individual creditor for the amount of his debt, 159.

Dividends. Article by H. W. Rogers, Esq., 163.

Where officers of a corporation have sold stock thereof at public auction for non-payment of an assessment thereon, a writ of *mandamus* will not be granted to compel them to transfer on the books of the corporation and issue a certificate for said stock to a purchaser thereof at said auction, 198.

How ownership of stock may be proved, 260.

Powers of building associations in Kansas, 357.

Opinion of Mr. Justice Harlan in the Telegraph cases, 360.

When shareholder may bring action against corporation, 214.

Definition of "promoter;" person other than a director occupying a fiduciary position, 215.

Where the by-laws of a corporation require that stock shall be transferred on the books of the company, a transfer by assignment and delivery only will not be effective, even as against a subsequent judgment-creditor of the transferor. Peoples Bank v. Gridley, 249.

The corporation known as the Lawrence bridge company, organized under an act of the territory of Kansas, approved February 9th, 1858, and the acts amendatory thereto, with the exclusive right and privilege of building and maintaining a bridge across the Kansas river at the city of Lawrence, was dissolved in twenty-one years from said February 9th, 1858, by expiration of the time limited for its continuance by the special statute under which it was created. State v. Lawrence Bridge Co., 373.

The provisions of sec. 29, ch. 23, Gen. Stats., are invalid and void, so far as they attempt to authorize corporations organized under special acts of the territory of Kansas, to continue in the enjoyment and exercise of the powers, privileges and franchises conferred on them by their special acts of incorporation, without any limitation as to time, as in conflict with section 1 of article 12 of the State Constitution. Ibid.

Kansas statutes as to building associations, 475.

COSTS.

[See PLEADING AND PRACTICE.]

COUNTERCLAIM.

[See PLEADING AND PRACTICE.]

COURTS MARTIAL.

[See JURISDICTION.]

COVENANTS.

[See DEEDS; LANDLORD AND TENANT.]

CRIMES.

[See the various special titles.]

CRIMINAL EVIDENCE.

On an indictment for sending a letter threatening to accuse one of crime, where the language is ambiguous, parol evidence admissible to explain its meaning, 134.

Admissibility of evidence of collateral matters, 420.

Proof of venue of offense, when dispensed with, 476.

Evidence of good character of prisoner, 478.

CRIMINAL LAW AND PROCEDURE.

Attempts. I. Unsuitability of Means. II. Attempts on Unsuitable Objects. Articles by Francis Wharton, 42, and see 257.

CRIMINAL LAW AND PROCEDURE—Continued.

Comments on the pardoning power of the executive, 60.

A conviction or acquittal of a simple assault and battery, before a court of competent jurisdction to try the same, does not bar a subsequent prosecution for the same assault and battery with intent to commit a felony. State v. Hattabough, 87.

A jury of matrons, 94.

When bill is returned "no bill" it can not afterward be reconsidered by jury, 116.

Explanation of rule that no person shall be put in jeopardy twice for the same offense, 117.

Section 1025 of the Revised Statutes provides: "No indictment * * shall be deemed insufficient * * * in matter of form only:" *Held*, that anything that forms part of the description of the crime is not a "matter of form." United States v. Conant, 129.

B & C, having had a quarrel with A, are approached by A. B commands him to halt or he will shoot him, and C thereupon shoots and kills A. *Held*, that the circumstances do not import a common intent between B and C to kill A, so as to make B guilty, 139.

Giving evidence by accomplice for State, does not bar indictment against him, 156.

If, during the trial, the court discover that an improper person is on the jury, mistrial may be ordered, 156.

Principle and Accessary. Article by Francis Wharton, 182, 202.

On trial for murder, persons are properly rejected as jurymen who, on their *voire dire*, answer that they would not convict on circumstantial evidence alone, 239.

Promise of prosecuting attorney not to prosecute witness on another indictment does not affect his competency, 239.

Supplying jury with intoxicating liquor not ground for reversal, when, 239.

Requisites of of indictment for conveying incumbered real estate, 277.

Waiver by prisoner of full jury; may a prisoner waive a trial by jury altogether, 313.

Where indictment is quashed or *nol. pros.* entered, discharge of prisoner does not necessarily follow; court may hold him for new indictment, 338.

Change of judge in criminal cases, 379.

The concluding clause "nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits" of the Mo. Stat. (Wag. Stats. p. 1030, sec. 27), *held* to be limited to the imperfections of the class or character previously enumerated. State v. Blan, 386.

Objections to the introduction of evidence can not be made for the first time in the court of last resort. Ibid.

Construction of "similar offense" in criminal statute, 396.

CUSTOMS.

[See USAGE.]

DAMAGES.

[See, also, "CIVIL DAMAGE" LAWS; NEGLIGENCE.]

Exemplary damages for wrongfully causing death of another, can only be given where there are aggravating circumstances attending such wrongful act. Where there are no such circumstances, the jury should be restricted to the necessary or pecuniary injury resulting from such death. Morgan v. Durfee, 12.

Pecuniary condition of defendant can be given in evidence, and is only proper subject for consideration of jury, where there are such circumstances of aggravation attending the wrongful act complained of as would warrant vindictive or punitive damages. Ibid.

Measure of, in actions of trover, 41.

For failure to deliver stock measure of damages is the same as for any other marketable commodity, *i. e.*, the value of the stock on the day when it should have been delivered, with simple interest, 75.

Measure of, for wrongfully attaching cattle, 96.

In actions for personal injury, a jury should take into consideration all the heads of damage, in respect of which the sufferer is entitled to compensation. These are the bodily injury sustained; the pain undergone; the effect on the health of the sufferer, according to its degree and its probable duration as likely to be temporary or permanent; the expenses incidental to attempts to effect a cure or to lessen the amount of injury; the pecuniary loss sustained through inability to attend to a profession or business. Phillips v. London &c. R. Co., 125, 365.

DAMAGES—Continued.

In an action for personal injuries, a new trial will be granted at the instance of the plaintiff, where the damages awarded by the jury are unreasonably small. A verdict for £7,000 damages set aside in this case because too small. Ibid.

When damages for loss of profits may be recovered in actions of tort, 159.

Punitive damages may be allowed in actions for slander of title, 160.

Measure of damages for delivery of goods by warehouseman before receiving principal's order, 215.

In the absence of fraud or bad faith, the proper measure of damages in a suit by the purchaser of a safe against the manufacturer, who warranted it "burglar proof," is the difference between the value of the safe as it was, and what it would have been worth if it been as represented; and not the damages sustained in the loss of valuables taken out of the safe by burglars, who effected an entrance into it. Herring v. Skaggs, 229.

To constitute the fraud in such a case, which will authorize recovery of the value of articles lost in the safe, there must be something more than the mere assertion that the safe was burglar proof; there must have been an assertion as a fact, of that which the seller knew to be false; or a recklessly false affirmation that the safe was burglar proof, when the seller did not know whether the assertion was true or false; or a knowledge on the part of the seller that the safe was not burglar proof, and a failute to communicate that knowledge, when the seller knew that the purchaser was contracting for the safe as burglar proof; and the purchaser trusting to these representations must have been misled by them. Ibid.

Measure of, in trover for coal taken from mine, 296.

Measure of, for defect on exchange of personal property, 397.

Measure of, for wrongful conversion, 417.

Measure of, in action for fraudulently inducing plaintiff to purchase certain chattels, 435.

Measure of, for putting up steam boiler with such defects as to make it worth less than contract price, is difference between value in defective condition and if completed in compliance with contract, 460.

Measure of, for discharge of servant before expiration of term. Query 59; answer 100.

DAYS.

Construction of word "day'. in election law, 74.

One calendar month's imprisonment, when commencing on a day other than the first of the month, dates from the day of imprisonment to the corresponding numerical day, less one, in the next month in the calender. If, owing to the shortness of the next month, there is no such corresponding day, the imprisonment will terminate on the last day of such next month. Migotti v. Colville, 105. 282

DECLARATION.

[See PLEADING AND PRACTICE.]

DECLARATIONS.

[See EVIDENCE.]

DEDICATION.

[See HIGHWAYS.]

DEEDS.

The word "minerals" in a deed does not include clay and sand, 221.

On contract to deliver a "good and sufficient deed," it is enough for the vendor to tender a deed sufficient in form without showing that he has title, 237.

A defective certificate of acknowledgment will not defeat the operative effect of a deed of conveyance in passing the legal title to the grantee, 338.

In what way delivery of deed may be proved, 398.

A condition in a deed of land that intoxicating liquors should never be manufactured, sold or otherwise disposed of as a beverage in any place of public resort on the premises is valid, 461.

DEFAULT.

[See PLEADING AND PRACTICE.]

DEFENSE OF HABITATION.

[See HOMICIDE.]

DEFENSES.

[See PLEADING AND PRACTICE.]

DEFINITIONS.

[See INTERPRETATION.]

DELEGATION OF POWER.

[See also MUNICIPAL CORPORATIONS.]

Legislative power can not be delegated, when, 474.

DEPOSITIONS.

[See PLEADING AND PRACTICE.]

DIRECTORS.

[See CORPORATIONS.]

DISQUALIFICATION.

[See also JURISDICTION.]

Ownership of land contiguous to line of proposed highway which may enhance value of such land, not such an interest as precludes owner from acting as member of board of commissioners, upon petition signed by himself and others for establishing the road, 395.

DIVIDENDS.

[See CORPORATIONS.]

DIVORCE.

When proofs in suit for, will be re-opened, 18.

Presumption that licentious persons of opposite sexes, consorting together, and holding loose views of the marital relation, commit such offenses as they have opportunity to commit, 18.

Extreme cruelty to wife for her husband openly to consort with and express his preference for loose females, 18.

The allowance of alimony in gross instead of by periodical payments proper where husband would be liable to vexatiously delay or withhold payments, 19.

"Turning out of doors," "indignities to the person," and "cruel and barbarous treatment," construed, 297.

"Abandonment" and "gross neglect of duty" construed, 427.

Effect of marriage after void decree of divorce, 478.

DOMICIL.

[See also CONFLICT OF LAWS.]

Declarations made by party when changing domicil. Doyle v. Clark, 5.

Infant has no power to change his, 381.

DOWER.

[See HUSBAND AND WIFE.]

DURESS.

Proof that a tax was paid under a written protest before it became delinquent, and before threats were made to sell property for its collection, is not proof that it was paid under duress, 139.

But a tax paid under protest after the delinquent list comes out of the hand of the tax-collector for collection by sale of the property, is paid under duress, 139.

A settlement between debtor and creditor is made under duress, where the creditor has stopped the payment of moneys due the debtor from third parties, and where the debtor is compelled to make it in order to remove the stoppage and thus avert his financial ruin, 236.

EASEMENTS.

The plaintiff and the defendants were occupiers of adjoining houses, and for more than twenty years the occupiers of the plaintiff's house had enjoyed access of air to the chimneys of it. Subsequently the defendants piled timber on the top of their house so as to overtop the plaintiff's chimneys and cause them to smoke. In an action by the plaintiff to recover damages for the nuisance so caused: *Held*, that the action could not be maintained, either on the ground that an easement had been acquired, or on the ground that the defendant had created a nuisance. Bryant v. Lefever, 9.

An easement of light and air, supplied to the windows of one person from the premises of another, can not be acquired in this State by a mere user for twenty years under a claim of right. Hayden v. Dutcher, 324.

Constructive notice of easement of light, 496.

EJECTMENT.

Adverse possession before and after decree ordering conveyance, 98.

Parts seeking to recover whole of undivided piece of land will fail, if it appear that another is the owner of an undivided share, and is thus a tenant in common with rights not inconsistent with those of his co-tenant, 98.

Claim and color of title; adverse possession; acts of ownership sufficient without claim by words, 178.

Adverse possession for twenty years; whether time runs from date of deed or of taking possession, 237.

Right of surety on bond on paying purchase money after default to take a deed or bring ejectment, 297.

ELECTIONS.

[See, also, MUNICIPAL BONDS.]

What is voting "by ballot," 58.

ELECTIONS—Continued.

The word "day" in an act providing that "it shall not be lawful for any person with or without license, to sell to any person any intoxicating drink on any day on which elections are now, or hereafter may be required to be held," etc., includes the whole twenty-four hours of the day upon which an election is held, 74.

Informality in returns not regarded when, 137.

The candidate for an office who does not receive a majority or a plurality of the votes, is not elected, because the opposing candidate who did receive a majority or plurality of the votes was ineligible, 139.

Before the result of an election in a board has been declared, proceedings already had may be treated as irregular, and a new vote taken, 141.

Where a tie vote is returned either party may contest, 296.

Votes cast ignorantly, when not to be counted, 474.

EMBEZZLEMENT.

When agent guilty of, 38.

Distinction between larceny and, 77.

Section 5209 of the national banking act as to embezzlement or making false entries by officers of national banks construed. United States v. Conant 129.

The word "embezzle" as found in the United States Revised Statutes, is used to described a crime which a person has an opportunity to commit by reason of some office or employment, and which may include some breach of confidence or trust. Ibid.

EMINENT DOMAIN.

Title acquired by railroads through compulsory power to condemn; fee still remains in proprietor, 15.

Charter of railroad authorizing it to occupy lands, and operate its road thereon without first making compensation, void, and company trespasser; but proprietor not entitled to road bed, ties, etc., placed on his land, 17.

Mode of computing damages on condemnation of land, 378.

Abandonment of proceedings after condemnation of land; damages, 499.

EQUITY PRACTICE.

[See PLEADING and PRACTICE.]

ESTOPPEL.

Of firm by representations of partner, 97.

Of stockholder by action of corporation, 116.

EVIDENCE.

[As to evidence in criminal cases see CRIMINAL EVIDENCE, and the various titles of crimes.]

Burden of proof.

In action by indorsee against maker of note executed in fraud, 215

Of failure of consideration for promissory note, 279.

Declarations.

Declarations made by a party in the act of changing his residence and as part of the *res gestæ*, are admissible as evidence of an intent to make the change permanent and rebut any inference that it was made for temporary purposes; *aliter* if made after the change is effected for the purpose of manufacturing evidence and establishing a fictitious domicil. Doyle v. Clark, 5.

Made by agents of corporation binding on latter, when, 16.

Of mortgagee of chattels against his interest, 199.

Of vendor of land as to fraudulent character of deed executed by him, made after its execution but while still in his possession, admissible against vendee, 235.

When declarations of party offered in evidence by opposite party not evidence for former, 279.

Declarations by agent disclaiming title of principal to property, 355.

Judicial Notice.

Of the almanac, 304.

Seal of corporation must be proved, 323.

Statutes of another State must be proved by authenticated copies, 323.

Of acts of the legislature creating municipal corporations, 475.

Law and Fact.

Where the facts are undisputed and witnesses unimpeached, or when a verdict for the opposite party would be set aside as against the evidence, it is the duty of the trial court to direct verdict for party entitled thereto by the evidence. Morgan v. Durfee, 12.

Rule as to province of judge and jury the same in oral as in written contracts, 75.

Directing a Verdict. Article by H. C. McDougall, Esq. 102.

EVIDENCE—Continued.

Jury must decide upon credibility, when, 337.

Whether a passenger has carried an excess of baggage is not a pure question of law for the sole or final determination of the court, but a question of fact for the jury, under proper guidance as to the law of the case. New York Cent. R. Co. v. Fraloff, 432.

Miscellaneous Rulings.

Proof of handwriting by comparison, 15, 480.

A person may testify as to his own age, 135.

In an action for an injury to abutting property, by reason of the construction of a railroad on a public street or highway, the plaintiff's title may be established by proof of adverse possession, 298.

Where coverture is relied on to save an action from the bar of the statute of limitations, the marriage may be shown by proof of cohabitation as husband and wife, 298.

Will of father or reputed father of person whose legitimacy is disputed, is admissible to disprove the legitimacy, 435.

A note written by plaintiff's attorney before suit, and expressing the opinion that defendant is not liable, is not admissible in evidence for the defense, 459.

In an action involving the settlement of accounts, figuring done by one of the parties when they were trying to settle, admissible as *res gestæ*, 460.

Statement in official documents as, 482.

Parol to Vary Writings.

Parol evidence is admissible as between the immediate parties to show that the indorser in blank of negotiable paper had, by agreement, varied the liability implied by law from the indorsement, 21.

Not admissible to show that a lease is really a bill of sale, 137.

Inaccurate description in deed; parol evidence inadmissible to locate land, 158.

Admissible upon identity of land described in deed executed by sheriff, 235.

When admissible to show under what circumstances and for what purpose indorsement on note was made, 295.

Acknowledgment of payment of consideration in deed can not be contradicted, 324.

Presumption.

That law applicable to case is the same in another state as here, 56.

That officers do their duty, 279.

A was found fatally injured in an excavation in a highway. All that was known of the matter was that he had been seen walking along the highway in his usual manner. A's administrator sued the town, alleging that the negligence of its authorities resulted in A's death. *Held*, that the case should be submitted to a jury, and that the jury should consider A's habits as to temperance and caution, and his acquaintance with the locality, in deciding whether he had exercised reasonable care, 355.

Of survivorship upon death of several in a common calamity, 381.

Relevancy.

In an action on the case for negligence, the evidence must be confined to the time and place and circumstances of the injury, and the negligence then and there; but what occurred to others, at other times, more or less remote, is collateral and inadmissible. Thus, where one is charged with negligence in not sufficiently lighting the hall and passage-way to his place of business, and in leaving open the doors to his elevator-ways: *Held*, that evidence, embracing a period of two years, tending to show at different times the condition of the hall and entrance-way as to light—whether more or less, or none—the position of the elevator gates and doors, of what had happened to others at different times, and their fortunate escape from peril, was not admissible. Parker v. Portland Publishing Co., 108.

In an action against a railroad for killing stock, the bad condition of its fences at other places than where the stock got upon the track is irrelevant, 159.

In action on bond of county treasurer for money stolen from him by robbers, evidence that he used a safe placed in his office by the county commissioners, irrelevant, 305.

In action against town for injuries received on highway, evidence as to condition of road at other places inadmissible, 359.

Witnesses.

When evidence of witness on former trial admissible, 381.

EXECUTIONS.

[See also, JUDICIAL SALES.]

EXECUTIONS—Continued.

Where the sheriff of one of the counties of Nebraska with process issued by a Nebraska court, comes into this State (Kansas) and levies upon personal property within the limits of this State, such levy is absolutely void, and confers no title or right of possession upon such sheriff. Denny v. Faulkner, 32.

But where such sheriff with such process levies upon property within the limits of his jurisdiction, he establishes a title and right of possession which will be recognized and protected in the courts of this State, (Kansas) although while holding such possession he temporarily moves such property into this State, and while in this State it is seized upon process issued out of a court in this State. Ibid.

When stockholder in corporation is not a judgment debtor within the Kansas code, 96.

If a deed of trust leaves an interest in the trust property in the grantor, such interest may be sold on execution, 139.

Unless required by statute, a levy or seizure of real property for the purpose of sale to satisfy a debt or tax may be made without going upon the premises, by making a memorandum upon the warrant ofthe description for the purpose of a levy, 155.

Execution can not issue except on a judgment, 296.

A having property seized upon execution, authorized the officer to apply it for the benefit of subsequent attachers, relying upon a promise of the debtor to pay him the execution. *Held*, that A, upon a failure of the debtor to keep his promise, could countermand the authority, so far as it had not been acted upon by the officer, and retain his lien upon the property attached, 299.

Liability for rent during year of redemption, 319.

The office of a writ of execution is to collect a debt, not to secure it. Therefore, the levy of an execution upon an unripe and growing crop, if made so long before the sheriff can sell it as to show an intention to hold the levy merely as security, is not valid as against subsequently acquired liens. Burleigh v. Piper, 347.

Unpublished manuscripts are not leviable property; so *held* of a set of abstract books, 460.

Seat in board of brokers not subject to execution, 495.

Stay of execution; when not entered of record; lien (fa.), 497.

EXECUTORS AND ADMINISTRATORS.

An administratrix of a vendor in a bill of sale has no greater rights in the property than her intestate and can make no other defenses than he against such bill of sale. Denny v. Faulkner, 32.

Where F domiciled in Nebraska dies leaving personal property in Kansas, and administration is duly taken out at the place of his domicil, and the administratrix so appointed takes peaceable possession of such property in Kansas, and there is no opposing administration in this State (Kansas), and no local creditors: *Held*, that the courts of this State will *ex comitate* recognize her possession as rightful and protect it as fully as though she had taken out letters of administration in this State. Ibid.

Executorship expenses include the costs of an administration suit; the costs of the funeral; the costs of warehousing specifically bequeathed chattels during the realization of the estate; and also rent accrued due since the testator's death for a house of which he was tenant from year to year, 37.

Action for money paid by executor by mistake, 77.

EXEMPTIONS.

[See HOMESTEADS AND EXEMPTIONS.]

EQUITY PLEADING AND PRACTICE.

[See PLEADING AND PRACTICE.]

EXPRESS COMPANIES.

[See COMMON CARRIER.]

EXTRADITION.

Fact of insanity of prisoner at time of crime being proved he may be discharged by commissioner, 240.

FALSE PRETENCES.

Sufficiency of indictment for, 215, 298, 319.

Distinction between larceny and, 241.

FALSE REPRESENTATIONS.

For representation made by A to B, on the faith of which C acts, A can not be held liable, 181.

Statements that a railroad company was able to lay its tracks and provide rolling stock and pay all bills contracted, and that the stock was not for sale, and could not be bought anywhere but of the defendant, made by the president of the corporation to one who was about to purchase stock are, 236.

FEDERAL COURTS.

[See PLEADING AND PRACTICE; REMOVAL OF CAUSES.]

FINDER.

Of property when guilty of larceny, 18.

FIRE INSURANCE.

[See INSURANCE LAW.]

FIRES.

[See NEGLIGENCE.]

FISH.

[See ANIMALS.]

FIXTURES.

Portable furnaces when, 116, 157; boiler, 458.

Gas fixtures remain chattels though affixed to house, 116, 157.

Cider mill and press are, 323.

What are fixtures, 474.

FORECLOSURE.

[See MORTGAGE.]

FORGERY.

A writing in form of receipt for money paid as part purchase money of a farm is an "acquittance" within the statute as to forgery (Vt.), 397.

Indictment for uttering forged receipt; requisites of; evidence, 398.

FRAUD.

In execution of bond, when no defense, 38,

Can not be predicated upon acts which the party charged has a right by law to do, nor upon the non-performance of acts which by law he is not bound to perform, whatever may be his motive, design or purpose, either in doing or not doing the acts complained of, 118.

Administrator's purchase at his own sale, when void, 157.

FRAUDULENT CONVEYANCES.

[See FRAUDULENT SALES AND CONVEYANCES.]

FRAUDULENT SALES AND CONVEYANCES.

Conveyance made when grantor not involved but in expectation of engaging in hazardous business which would require him to incur debts, *held*, properly set aside, 136.

GAMING.

[See also, NEGOTIABLE AND ASSIGNABLE PAPER.]

The offer by an association of a purse of $600, divided into four parts, to be given to the winning horse of a race to be run under the rules of the association, is not within the statute against gaming, 159.

GARNISHMENT.

The rule that money *in custodia legis* is not subject to process is applicable to the case of funds in the hands of an assignee in bankruptcy which another is attempting to secure by garnishment. *Re* Cunningham, 208.

GIFT.

To what extent is a gift revocable? Query, 59; answer, 120.

GUARANTY.

[See SURETYSHIP AND GUARANTY.]

GUARDIAN AND WARD.

An equitable wardship arises where a son takes charge of his father's affairs, in the belief that the latter is incompetent to manage them, and the father passively assents, 19

Bargain between guardian and ward; former must show its fairness, 19.

Where administrator is also guardian of ward to whom intestate was indebted, money coming to his hands as administrator applicable to the debt goes *eo instanti* to him as guardian, 235.

HABEAS CORPUS.

Prisoner can not be relieved under, where judgment is not void but merely irregular, 135.

HIGHWAYS.

Evidence to show intention to dedicate, 208.

In 1863 the Lawrence Bridge Co. constructed a bridge over the Kansas river at the city of Lawrence, for the convenience of the public, in the hope of profit to be derived from tolls as authorized by its special charter. Since 1863 the bridge has been used as a thoroughfare uninterruptedly and without molestation, except tolls have been demanded and taken from all persons crossing the bridge. The corporation had no property in the approaches to the bridge, nor in any of the lands on which it was built. The bridge is an immovable structure and an extension of the highway over the Kansas river. *Held*, that the bridge is a public highway. When the corporation expired by limitation, its franchise or license to demand or take tolls also expired, and the free use of said common highway is in the public. State v. Lawrence Bridge Co., 372.

HOMESTEADS AND EXEMPTIONS.

Common Law Exemptions. Article by W. L. Stonex, Esq; I, 2; II, 262.

Rights of widow and children; abandonment, 15.

Conveyances between husband and wife; protection of homestead from creditors, 115.

Printing press and type "tools" within exemption law, 122.

Mill not exempt under homestead law, 338.

A covenant in a lease providing that the rent due or to grow due should be a perpetual lien upon all the crops raised and stock kept upon the premises, whether exempt from execution or not, is valid and binding, 421.

A statute provided that "each head of a family or guardian of a family of minor children should be entitled to a homestead." *Held*, that the guardian of one minor child was entitled to a homestead, 419.

Unpublished manuscripts are exempt from execution, 460.

Exemption of wages from garnishment under Illinois Statute. Query VIII, 508; answer, 79.

Exemption of horses under Iowa Statute; how is statute to be construed? Query, 79; answer, 139.

HOMICIDE.

Deceased, who was in the habit of carrying concealed weapons, was a dangerous man, and had previously made violent threats against defendant, entered defendant's office, commenced an angry altercation with him, and when ordered to leave, refused, in an angry and abusive manner. Defendant attempted to put him out by force; deceased caught defendant by the throat, choking him and pulling him toward the door, when defendant, in attempting to stay himself, placed his hand upon a notary's seal near by, and, raising it, struck deceased on the head, from which blow he fell out of the door, and shortly after he died, either from effects of blow or fall on the pavement. *Held*, that the refusal to instruct jury to render verdict for defendant on this state of facts was error. Morgan v. Durfee, 12.

A man has the right not only to defend his person but his place of abode from unwarranted attack, or threatened danger, to defend his possession, and use such means as are necessary to repel the assailant from his dwelling or office, even to taking of his life, and an instruction which ignores this right of party assaulted therein is bad, even though it state correctly the law of self-defense of the person. Ibid.

"Malice" is a legal term having a technical signification, and is not the legal equivalent of "revenge," and where jury are told that the mortal blow to be justifiable must not be struck in a spirit of malice or revenge, and no definition of the word "malice" is given, such instruction is defective in leaving the jury to construe the word as they would. Ibid.

An indictment for murder may charge the assault to have been made with several kinds of weapons. State v. Blan, 387.

An indictment that A gave the mortal blow, and that B was present aiding and abetting, is sustained by evidence that B gave the mortal blow, and A was present aiding and abetting, and it is wholly immaterial whether it is correctly stated in the indictment that either or both did it. Ibid.

An indictment for murder must allege an assault and the nature thereof, a mortal wounding of the deceased, and that the deceased died of such wounds within a year and a day, and the averment that "the defendant did kill and murder" the deceased, without averring that he died of the wounds, is but a statement of a legal conclusion, and is insufficient. Ibid

The doctrine that an indictment need not describe the wound, nor state the part of the body on which it was inflicted, and also that where there are several counts charging the same offense, one good count will sustain a general verdict of guilty, reaffirmed. Ibid.

Murder in the Commission of a Felony. Article by Hon. H. S. Kelly, 422.

The Degrees of Homicide. Article by Hon. H. S Kelly, 442.

When two persons mutually agree to commit suicide and one fails in the attempt, the other is guilty of murder, 440.

HORSES.

[See ANIMALS.]

HUSBAND AND WIFE.

[See also DIVORCE.]

Liability of wife under Iowa code for family expenses, 17.

Husband liable for wife's torts, 58.

Marriage is a privilege belonging to persons as members of society, and as citizens of the States in which they reside, and may be abridged at the will of the States in which they reside, 56.

The contract of a married woman, living with her husband and without a separate estate, to furnish a person with a home in her family for life, is invalid, and will not support a concurrent promise made in consideration of such contract. Olney v. Howe, 125.

To sustain an action for separate maintenance, two facts must concur—the complainant must be living apart from her husband, and must be so living without fault on her part, 160.

Ante-nuptial Contracts which Bar Dower. Article by W. H. Whittaker, Esq., 222.

Goods of wife pledged by lunatic husband; guardian required to redeem, 294.

Estate of married woman liable for debts for benefit of, 335.

Note given by married woman; liability of crops raised by husband and wife jointly, 358.

When conveyances between husband and wife fraudulent, 436.

Married woman's chose in action; reduction into possession; gift of husband to wife, 497.

Married woman's deed; estoppel. Query, 19; answer, 40.

A conveyes to B in fee without his wife joining. B then mortgages to C. B then conveys in fee to wife of A. What has become of the dower of wife of A? Query, 239; answers, 280, 340.

ICE.

The original title to ice is in the possessor of the water where it is formed, and it passess with that possession. Higgins v. Kusterer, 247.

A sale of ice ready formed, whether in or out of the water, as a distinct commodity, is a sale of personalty. Ibid.

A parol bargain for ice, formed on the surface of a pond, both parties being in view thereof, and the price being paid on the spot: *Held*, to pass the title. Ibid.

ILLEGAL CONTRACTS.

[See CONTRACTS.]

INDICTMENTS.

[See CRIMINAL LAW AND PROCEDURE, and the various special titles.]

INFANCY.

An infant is bound by his contract of service, so far as he has executed it without dissent, when not fraudulent or unreasonable. Spicer v. Earl. 186.

Custody of infant taken from mother on account of atheistical views, 258.

Infant not liable on his contract though guilty of false representations, 336.

Right of infant to disaffirm mortgage, 475.

INJUNCTION.

A party can only be relieved from the operation of an injunction, absolutely prohibiting the performance of a specific act, by the court granting the injunction, 155.

Injunctions to restrain libels; article from *Solicitors' Journal*, 314.

Will not lie to restrain trespass where the injury is not irremediable, 323.

Can an agreement by one person not to attempt to make a judgment out of another provided the latter confesses judgment, be enforced? Query, 299; answer, 340.

INSANITY.

Conduct of relations towards an individual, better evidence of what they think of his mental unsoundness, than any term they can use to express it, 19.

Person having "the blues" incompetent to manage business and make bargains, when, 19.

Can a party adjudged insane in one State be held liable on contracts made in another? Query, 19; answer, 40.

INSPECTION OF RECORDS.

[See RECORDS.]

INSTRUCTIONS.

[See PLEADING AND PRACTICE.]

INSURANCE LAW.

[See also, CORPORATIONS.]

In General.

Contract of re-insurance creates no privity between the re-insurer and the original insured. The re-insured, to maintain his action against the re-insurer, is not obliged to show that he has paid the loss, but may at once bring suit, to which the re-insurer may make the same defense which the re-insured can make against the original assured, or the former may await a suit by the latter and give notice of it to the re-insurer, and on being subject to damages, recover them, together with the costs and expenses of the litigation from the re-insurer. Gantt v. American Ins. Co., 267.

Where, after notice of suit threatened or begun against the re-insured, the re-insurers do not disapprove of its contestation by the re-insured, the latter shall be deemed to have been required by the re-insurers to defend the same; and such defense when made in good faith will render any judgment obtained by the original insured binding on the re-insurers as to all matters which could have been litigated, and make them liable for the costs and expenses of the litigation. This can not be affected by a contract entered into between the re-insured and the re-insurers, in which neither were bound to do anything more than the law required of them. Ibid.

Where a loss occurs on a policy of re-insurance, the liability of the re-insurer is not contingent on the amount paid by the re-insured, nor upon any payment whatever by him, but he is liable for all that the re-insured becomes liable to pay by reason of such loss. Ibid.

Construction of Wisconsin laws as to insurance companies, 416.

Fire Insurance.

Stipulations in policy construed strongly against usurer, 59.

Warranties and representations in fire policies, 59.

A mutual insurance company is relieved from liability for loss occasioned by fire, after a voluntary surrender and acceptance of the policy, and payment of assessments then due, notwithstanding by-laws provided that the liability of the members should continue until cancellation of policy shall be made, 157.

A provision in a policy of insurance that in case of loss the proof of loss "must be made before the nearest magistrate or notary public," should receive a liberal construction. Its object is simply to prevent the assured from selecting the magistrate. A short distance is not material. Williams v. Niagara Ins. Co., with note, 190.

The policy stipulated that the consent of the company should be necessary to allow the premises to become or remain unoccupied. At the time of making the application, the agent agreed with the assured that the building might remain unoccupied for thirty days. *Held*, that this was binding on the company. Ibid.

Mortgagee may give notice of loss, 216.

Provision against incumbrances only includes valid incumbrances, 216.

Condition in policy barring suit after twelve months from loss; when time begins to run, 237.

Street broker agent for insurer, 278.

The manifest intent and purpose of a clause in a fire insurance policy that, "if a building shall fall, except as the result of a fire, all insurance by this corporation on it, or its contents, shall immediately cease and determine," is that the insurance, whether upon a building or its contents, shall continue only while the building remains standing as a building, and shall cease when the building has fallen and become a ruin. Huck v. Globe Ins. Co., 290.

When substantially all the floors and roof of a building used as a store-house fall, leaving nothing standing but the outer walls and perhaps a stair-case or an elevator, the building must be deemed to have fallen. Ibid.

Under a policy insuring certain wearing apparel contained in a certain house against loss by fire, the insurer is liable for its destruction by fire while being worn away from the house. Longueville v. Western Ins. Co. 292.

The term "household furniture" as used in a policy of insurance does not include wearing apparel. Ibid.

Construction of conditions in policy as to "explosions," 316, 482.

Stipulations as to ownership of property and as to valuation, 336.

What is an "insurable interest," 357.

When company not bound by acts of agent, 416.

INSURANCE LAW—Continued.

Selection of appraisers by company estops it from denying proper proof of loss, 418.

Description in policy of building insured as a "dwelling house" not a warranty that it is so occupied, 419.

Effect of carrying on illegal business, 436.

A condition in a fire policy against subsequent insurance, is not broken by the taking of subsequent policies by the insured which never took effect by reason of conditions therein contained, 437.

The receipt of payment on such subsequent void policies, is not a matter of defense in an action on the prior policy. Ibid.

What is such an increase of risk as will avoid policy, 496.

Set off in diminution of risk, 496.

If upon making out proofs of loss, the company make certain specified objections, it thereby waives all other objections not specifically pointed out, 477.

Construction of "vacant and unoccupied," 477.

Life Insurance.

Misstatements as to age of insured; voluntary admissions separable from others, 177.

Forfeiture of endowment policy, 259.

Warranty not implied from declarations; meaning of "declares," 297.

A clause in a policy provided that "in case of the death of the insured by his own act or intention, sane or insane," the company should not be liable for the sum insured, but only for the net value at the time of the death: *Held*, that the above provision avoided the risk as to the sum insured in the case of an intentional self destruction by an insane man, *i. e.*, if the assured, at the time of causing his own death, was conscious of the physical nature and consequences of his act. and intended to put an end to his own life, although he was not conscious of the moral quality or criminality of such act. Adkins v. Columbia Life Ins. Co., 447.

Marine Insurance.

Policy on wharfboat lying at certain place; insured not bound in time of danger to remove it to safer place, 118.

Qualifications to doctrine that a policy of marine insurance is a contract of indemnity, 496.

INTEREST.

The taking of a bonus above the legal rate of interest by an agent for the loaning of money, without the knowledge or authority of the principal, will not render the note taken, and bearing only a legal rate of interest, usurious in the the hands of the principal, 77.

Action does not lie to recover back usurious interest, 116.

Note given on usurious contract and partly paid, new note given on balance also usurious, 122.

Usurious interest is a sufficient consideration to support a promise to extend the time of payment of a note. Stillwell v. Aaron, 126.

Where money is loaned at the highest rate of interest allowed by law, a contract to pay a sum in addition to such rate in consideration of an extension of time of payment is usurious, 318.

Interest from date of promissory note if not paid at maturity; effect of death of maker before maturity, 136.

Where an account extending over a number of years was ordered, and the rate of interest during the time had been changed by law. *Held*, that the interest payable on the accounting must conform to such fluctuations, 294.

In awarding damages for an injury resulting from a tort, compensation in the nature of interest may be included, 298.

Compound interest, 321.

Right of legatee to interest on legacy, 438.

INTERPLEADER.

Questions of abuse of trust can not be tried on bill of interpleader by trustees to obtain advice of court, 219.

INTERPRETATION.

"Acquittance," 397.
"Action," 160.
"Assault," 474.
"Bad," 396.
"Battery," 474.
"Court," 38.
"Day," 74.
"Declares," 297.
"Discovery," 449.
"Embezzle," 129.

INTERPRETATION—Coutinued.

"Employer," 38.
"Extreme cruelty." 18.
"Fallen building," 290.
"Franchise," 224.
"Household furniture," 292.
"Improvements," 100.
"Judicial business," 200.
"Laborer," 198.
"Malice," 12.
"Matter of form," 129.
"Minerals," 221.
"Necessary help," 200.
"New building," 157.
"Office," 276.
"Officer," 38, 98.
"Person," 215.
"Poor relations," 323.
"Professional employment, 276.
"Rainy day," 56.
"Scrawl seal," 299.
"Settle," 294.
"Similar offense," 396.
"Timber," 377.
"Tools," 122.
"Vacant and unoccupied," 477.
"Writing," 449.

INTOXICATING LIQUORS.

[See "CIVIL DAMAGE" LAWS; LIQUOR LAWS.]

JOINDER OF ACTIONS.

[See PLEADING AND PRACTICE.]

JUDGES AND LAWYERS.

[See LAW AND LAWYERS.]

JOINT AND SEVERAL LIABILITIES.

Can a person having a joint claim against two after suing one alone and failing to collect the judgment, proceed against the other? Query, 99; answer, 140.

JUDGMENTS AND DECREES.

[See also, PLEADING AND PRACTICE.]

Effect of failure to deny execution of lease in suit; lease disputable in second suit, 217.

Although a judgment rendered by a member of the bar, and not by one commissioned as judge, is void, yet when the parties willfully, knowingly and fraudulently submit to a trial before one whom they know to be a mere intruder upon the judicial bench, go through with the same to a judgment, and on the appeal of the case make no exception to the trial on the score of incapacity of the person who acted as judge, and when the record purports to be true and regular on its face, the court of chancery has no power to set aside the judgment at the suggestion of one of the perpetrators of the fraud. Blackburn v. Bell, 254.

Whether a court of equity may, under the law and statutes of this State, expunge the record of a judgment, appearing upon the records of another county, *quære*. Ibid.

Plea of former adjudication to be good must show that matters in controversy in case at bar actually were determined in the former action, or that they might have been litigated under the issues, 319.

Judgment for excessive amount erroneous, and not cured by consent of parties, 318.

Amount of judgment expressed in numerals without more, judgment void for uncertainty, 338.

Scire facias on a judgment may be maintained by an assignee, 401.

JUDICIAL NOTICE.

[See EVIDENCE.]

JUDICIAL SALES.

A sheriff's sale on execution against A, of realty in the adverse possession of B is invalid, 301.

Sale by assignee in bankruptcy, a "judicial sale," 318.

A purchaser at sheriff's sale who fails to pay the purchase-money within the time limited by the terms of sale, is not relieved from his liability to the sheriff by the fact that there is a second sale, at which the property is struck off at an increased price, unless the purchaser at the second sale pays in his purchase-money, 158.

Failure of sheriff to sell in parcels, 357.

Sale on execution; assignment of certificate of sale, 438.

JURISDICTION.

[See, also, JUDGMENTS AND DECREES; JUSTICE OF THE PEACE.]

JURISDICTION—Continued.

Jurisdiction of State court to declare void erroneous proceeding of Federal Court in derogation of State law. Snitterlin v. Connecticut Ins. Co., 26.

Although a decree of the United States Circuit Court for the Northern District of Illinois upon a bill filed to foreclose a mortgage, for the sale of the mortgaged premises, without granting to the mortgagor the right of redemption of the property within one year, as given by the statutes of the State of Illinois, is erroneous and void, yet where no appeal is taken therefrom within the allowed time, the courts of the State of Illinois have no power upon bill filed by the mortgagor to set aside the sale and allow the redemption. Ibid.

Bill to set aside decree for fraud must be brought in court where decree rendered, 155.

When jurisdiction of probate court can not be questioned (Mass), 259.

Disqualification of judges of the Court of Appeals to hear the appeal in Buford v. Com. where prisoner was indicted for killing a member of that court, 321.

Want of verification to complaint not a jurisdictional defect, though required by statute, 375.

Where defendant is induced to come into the jurisdiction by fraud, process served on him will be set aside, 498.

Plea of usury may be maintained in State court against national bank, 497.

Has a court martial jurisdiction to try a person whose term of enlistment has expired for an offense committed while he was a soldier. Query, VIII. 447, answer, 20.

JURY.

[See CRIMINAL LAW AND PROCEDURE; PLEADING AND PRACTICE.]

JURY OF MATRONS.

[See CRIMINAL LAW AND PROCEDURE.]

JUSTICE OF THE PEACE.

On appeal from justice of the peace *non est factum* may be pleaded, 39.

Justice of the peace liable for trespass in making an order without a previous complaint in writing, as required by the statute, binding the defendant over for trial, who refused to give the bail, and was therefore imprisoned, 124.

Jurisdiction of, in suit for penalty for failure of railroad to stop before crossing road, 295.

Judgment for amount above jurisdiction of justice; remittitur; indefinite judgment, 399.

Proceedings before, when voidable and not void, 458.

Sufficiency of affidavit on appeal from, 479.

Judgment of, of another State must show jurisdiction, 458.

Is an execution issued by a justice of the peace and not returnable according to law, void or voidable? Query, 439; answer, 460.

LAND LAW.

What is sufficient possession under unrecorded deed, 77.

Under Kansas laws actual residence is required of purchaser of school lands, 457.

Effect of misdescription in application for public lands, 478.

LANDLORD AND TENANT.

[See also, NEGLIGENCE.]

Scotch law as to deduction in rent for sterility of land, 40.

Where lease stipulates for renewal upon same terms and both parties act in accordance therewith no actual renewal is required, 57.

Tenant has no right without express authority or license, to cut trees upon the land, except for necessary firewood, 58.

Abandonment of distress proceedings does not waive lien of landlord under Illinois statute, 119.

Right of tenant as against landlord to be let alone in occupation of premises, 121.

S having a term of eight years in a house and shop agreed with B to let him the house and shop at £26 a year, payable quarterly, and further agreed to let B have a lease at £26 a year at any period he might feel disposed, and not molest or disturb him, or raise his rent after he had laid out money on the premises. B having laid out $150 it was ruled that he was entitled to a lease for the residue of the term, less one day, if he should so long live, 162.

Landlord suing as trustee for tenant, 176.

Construction of covenant in lease not to assign or part with possession, 258.

LANDLORD AND TENANT—Continued.

A person having entered premises under written lease covenanting to pay rent for given term can not before expiry thereof refuse to pay on ground that he himself was owner of premises when lease was made, 375.

Has a landlord's distress for rent precedence of a prior execution lien by sheriff. Query VIII 488; answer 20.

LARCENY.

Finder of property when guilty of, 18.

Distinction between embezzlement and, 77.

May be committed if goods obtained from the owner by delivery, 122.

Distinction between false pretences and, 241.

Taking the property of another without his consent with intent to conceal it until the owner offers a reward for its return, and then obtain the reward is, 419.

LAW AND FACT.

[See PLEADING AND PRACTICE.]

LAW AND LAWYERS.

Address of the Minnesota bar to Judge Dillon, 20; of the St. Louis bar, 78; of the Arkansas bar, 137.

Meeting of the American Bar Association, 80, 200.

Death of Isaac Grant Thompson, 240.

LAW REFORM.

Discussion of the subject of, 36.

Suggestion Upon Code Procedure and Code Revision. Articles by Hon. Asa Iglehart. III. Code Revision in General, 62, 83; IV. Illustrations from Rules of Practice, 242; V. The Methods of Trial Under the Code, 282, 302; VI. Appellate Proceedings, 383, 402.

LEADING ARTICLES AND LEGAL ESSAYS.

[See the various special titles.]

LEASE.

[See LANDLORD AND TENANT.]

LESSOR AND LESSEE.

[See LANDLORD AND TENANT.]

LIBEL.

[See SLANDER AND LIBEL.]

LICENSE.

[See also LIQUOR LAWS.]

Where the owner of land gives, for a consideration, a parol license to another to build a bridge on his land, an action of trespass will lie against him for removing it without consent, 122.

LIENS.

[See also, MECHANICS LIEN.]

Secret liens not allowed against *bona fide* purchasers, 356.

Construction of Missouri statute as to lien on personalty for purchase price. Query VIII. 508; answers, 139, 160. Query, 120; answer, 160.

LIFE INSURANCE.

[See INSURANCE LAW.]

LIGHT.

[See EASEMENTS.]

LIMITATION.

The statute of limitations in its ordinary acceptation, does not apply to bank bills intended to circulate as money, 116.

The statute begins to run upon the personal (statutory) liability of the stockholders from the time when the bank refuses and ceases to redeem and is notoriously insolvent, 116.

Statute of limitations in suit for non-return of pledge, 135.

Possession of part of land under Missouri statute. 136.

Scire facias to revive a judgment is an "action" within the meaning of that word in the statute of limitations, (Ill.) 160.

Twenty years' possession by the mortgagee of property mortgaged, without account or acknowledgment of any subsisting title, is a bar to the equity of redemption, unless the mortgagor can bring himself within the proviso in the statute of limitations. This rule is reciprocal, and the mortgagee may be equally barred by lapse of time, when the mortgagor, after the forfeiture, has been permitted to retain possession for twenty years, unless circumstances can be shown to repel the presumption of payment. Locke v. Caldwell, 351.

The possession in each case must be actual and not constructive, even when the lands are wild and uncultivated, in order to create the bar. Ibid.

LIMITATION—Continued.

On a bill in equity for an accounting by an administrator of one partner against another, the statute of limitations is a bar, as in a court of law, and the mere fact that the funds in the hands of the latter may be considered a trust, and that, too, a constructive trust only, does not operate to remove the bar of the statute. McKeown v. Guild, 368.

In order to take a case out of the statute of limitations it is not sufficient that the debtor admits the account is correct but he must go further and admit that the debt is still due and has never been paid. Ibid.

A mere non-user of all corporate powers is not a conconcealment of the corporation such as to suspend the running of the statute of limitations, 376.

When action on note is barred, it is likewise barred on mortgage given as security therefor, 376.

Defective description of land in tax deed cured by statute of limitations, 376.

LIQUOR LAWS.

[See also, "CIVIL DAMAGE" LAWS.]

On indictment for selling without license, no defense that defendant was a druggist and sold the liquor on prescription, 1, 318.

Voluntary payment of excessive license fee, when not recoverable, 78.

Person may be punished under city ordinance or indicted under general law, 338.

Where a license to sell intoxicating liquors was issued on the 7th day of March, 1879, covering a period of one year from January 7th, 1879, and the holder of such license was indicted for a sale made on March 1, 1879: *Held*, that the license, when issued, legalized the prior illegal sale, and defendent could not be punished therefor. State v. Wilcox, with note, 407.

LOTTERIES.

A person who had purchased lottery tickets to sell again, sued the managers of the lottery for the negligent conduct of the same, whereby the public confidence in the lottery was impaired, and a large number of his tickets remained unsold. *Held*, that the action would not lie, 123.

LUNATIC.

[See also, AGENCY.]

Property of a lunatic, put into the hands of a committee, is *in custodia legis*, and can not be reached by a creditor for a debt or judgment, prior to the lunacy, except by an order of court, 198.

Such order can not be made until first a sufficiency is ascertained and set apart for the maintenance of the lunatic and that of his family, if minors, 198.

Liability of lunatic accommodation indorser, 496.

MALICIOUS PROSECUTION.

Corporation not liable to action for, 16.

In an action for malicious prosecution, plaintiff must show that the prosecution or proceeding of which he complains is legally at an end, and that it was instituted maliciously and without probable cause. Potter v. Casterline, 63.

The legal termination of the prosecution is sufficiently shown by the refusal of the grand jury to find a bill, without a formal order of discharge by the court. A rejection of the complaint by the grand jury is *prima facie* evidence of want of probable cause. Ibid.

A defendant can not excuse himself by showing that he acted under the advice of an unprofessional person. Ibid.

Bank manager has no authority to institute criminal prosecution on behalf of bank, 258.

MANDAMUS.

[See also, CORPORATIONS.]

Protection arising because the party was brought into the court's jurisdiction by the process of another court, is not a question addressed exclusively to the court under whose process the arrest was made; the privilege is primarily conferred for the protection of the party himself, and if the court allows its process to be used against it, an appellate court will correct the wrong by *mandamus*. People v. Judge of Superior Court, 8.

MANSLAUGHTER.

[See HOMICIDE.]

MARINE INSURANCE.

[See INSURANCE LAW.]

MARRIAGE.

[See DIVORCE; HUSBAND AND WIFE.]

MARRIED WOMEN.

[See HUSBAND AND WIFE.]

MASTER AND SERVANT.

[See also, NEGLIGENCE.]

Inability of Servants to Fulfil Contracts with Masters. Article from *Irish Law Times*, 174.

Action sustainable by master against one who entices servant to desert his employment, 197.

What is the measure of damages for discharge of servant before expiration of term? Query, 59; answer, 100.

MAXIMS.

Omnio præsumuntur contra spoliatorem,, 378.

MEASURE OF DAMAGES.

[See DAMAGES.]

MECHANIC'S LIEN.

At what time petitioner "ceases to labor or furnish material," under Mass. statute, 77.

Parties bound by judgment under, 178.

An overseer is not a "laborer" within mechanic's lien law, 198.

Lien for material furnished does not attach on lumber sold, which was not used in the erection or repair of a building, unless sold with an understanding that it should be so used, 235.

Description of land in petition for mechanic's lien, when not sufficient, 238.

When time of performance of contract an element o a, 278.

Lien for work on "logs and timber," under Wisconsin statute; laths not "timber," 377.

Cross bill by defendant to recover damages not allowable; claim must be made in separate suit, 399.

Contract between owner and contractor; payment to be made in land; declarations of owner to sub-contractor, 417.

A mechanic's lien can not be enforced against real estate belonging to a municipal corporation and in public use, 419.

In proceeding for, statute must be strictly followed, 457.

What is the meaning of "improvements?" Query, 99; answer, 100.

MERCANTILE AGENCIES.

[See NEGLIGENCE.]

MINING.

Where there are two mines, one being situated immediately above the other, the proprietors of the lower mine are bound at their peril not to weaken the natural supports of the upper; and if they do so and damage ensues to the owners of the upper mine, the former are liable for such damage, even though there be no negligence on their part in their mining operations. Yandes v. Wright, 348.

MOB.

[See MUNICIPAL CORPORATIONS.]

MONTH.

[See DAYS.]

MORTGAGE.

Of Personalty.

Where a chattel mortgagee takes possession of the property mortgaged, and in good faith, according to the statute, advertises and sells the property, he is responsible to the mortgagor for only the surplus of the proceeds of such sale above the debt, interest and costs. But if he make other disposition he is responsible for the difference between the actual cash value at the time and place of taking possession and the amount of the debt and interest. Denny v Faulkner, 32.

Destruction between conditional sale and chattel mortgage, 58.

Not fraudulent when duly acknowledged and mortgagor remains in possession without power of sale, 76.

As between the holder of a chattel mortgage, duly recorded, and a landlord upon whose premises the mortgaged property is used subsequent to the execution of the mortgage, and with the knowledge of the holder, the mortgagee is entitled to the prior lien, 77.

A chattel mortgage upon a stock of goods in store may covenant that goods shall be put in to keep up the stock, and it will cover goods so put in, 199.

Admissions of mortgagee against his interest, 199.

A general sale of a chattel mortgagor's interest does not give an immediate right to replevy without demand, 199.

Chattel mortgage not void for uncertainty when, 338.

When absolute conveyance, and separate agreement to recovery constitute a mortgage, 376.

MORTGAGE—Continued.

Of Realty.

After foreclosure of a mortgage upon real estate under the power, the only right of redemption by mere act of the parties is that given by statute, and can be exercised only as there prescribed, 57.

After-acquired lands not used in connection with the actual operations of a railroad, can not pass under a general mortgage of the railroad itself, as a part thereof, under the doctrine of accretion. Calhoun v. Paducah &c. R. Co., 66.

Where the property conveyed by such a mortgage is described as "the railroad then constructed and to be constructed, etc., and all other corporate property, real and personal, of said railroad company, belonging or appertaining to the said railroad, whether then owned or thereafter to be acquired," lands subsequently acquired and not essential to the operation of the road do not pass by the mortgage by implication. Ibid.

Mortgage by tenants in common; conflicting liens, 199.

A mortgagee is so far the owner in fee of the mortgaged estate that if any part of it is wrongfully severed and converted into personalty by the mortgagor his interest is not divested, but he remains the owner of the personalty and may follow it and recover it or its value of any one who has converted it to his own use. But the severance must be wrongful, and where it is made by the mortgagor or one acting under his authority, whether it is wrongful will depend upon the question whether a license to do the act has been expressly given or is fairly to be implied from the relations of the parties. Searle v. Sawyer, 466.

Where the mortgaged estate is a farm, a license to cut and carry to market wood and timber to a limited extent might be implied from the relation of the parties, if in carrying on similar farms it is usual and good husbandry so to do. Ibid.

Damages for failure to perform a contract to procure the discharge of a mortgage can not be claimed, if it does not appear that the mortgage was foreclosed or the claimant damnified, 459.

Mortgage; foreclosure; redemption. Query, 59; answers, 100, 120, 139.

MUNICIPAL BONDS,

Liability of county on, where no payee expressed, 158.

Where the law authorizing a township to issue railroad bonds provides that the election shall be held at a general election conducted by the supervisors and officials of the township, and the same is held instead at a meeting of the people of the township presided over by a moderator, the bonds issued in pursuance thereof are void, even where they have passed into the hands of innocent holders, and the town has paid interest for three years. In such a case the town is not estopped from denying the validity of the bonds. Lippinscott v. Town of Pana, 428.

An election is absolutely void and not voidable when it is held by persons who are not officers *de jure* or *de facto* acting under colorable authority. Ibid.

Under the new Constitution, which prohibits a donation by a township to a railroad, except where the same has been authorized under existing laws, the vote of the people of a township taken in a manner not pointed out by law is not such an authorization under existing laws as to prevent or remove the constitutional prohibition. Ibid.

In cases depending upon the Constitution or statutes of a state, the Supreme Court of the United States adopts the construction of the Constitution or statutes given by the courts of the State, when that construction can be ascertained, and when different and conflicting interpretions have not been made by the State courts. Fairfield v. County of Gallatin, 467.

In a suit upon coupons of a series of bonds issued by the defendant, a county in the State of Illinois, in October, 1870, as a donation to assist in the construction of a railroad, the question presented was whether a donation to a railroad company legally authorized and approved by a majority of the legal voters of a county prior to the adoption of the new State Constitution is rendered invalid by a prohibition of such donations contained in that Constitution. In Town of Concord v. Portsmouth Savings Bank, 92 U. S. 625, 3 Cent. L. J. 249, this court held that donations by counties to railroads were prohibited by the Constitution; that they could not lawfully be made after July 2, 1870, even although they been authorized by a prior statute and by a vote of the people of the county. It now appearing, however, that prior to the above decision by this court, the Supreme Court of Illinois in construing this same section had, unknown to this court at that time, decided that donations, if sanctioned by popular vote before the adoption of the Constitution, are not prohibited by it, this court changes its decisions as made in Town of Concord v. Portsmouth Savings Bank, *supra*, and adopts the interpretation of the State Supreme Court. Ibid.

MUNICIPAL BONDS—Continued.

MUNICIPAL CORPORATIONS.

[See also, NEGLIGENCE.]

A municipal corporation can not ratify an unlawful act; but this rule does not affect proceedings to recover back money or property obtained by an act *ultra vires* 19.

Highway commissioners can not bind their township by a partial payment for work which the township could not have authorized, such as the digging of a sewer within another jurisdiction, 19.

A municipality can not abridge its legislative power by contract, and it can not impair a contract by its legislative power; neither can it make a valid contract beyond its power to contract, and a contract made within its power to contract is valid. City of Indianapolis v. Indianapolis Coke Co., 193.

A contract made by a municipal corporation, not *ultra vires*, not against public policy, and not fraudulent, may be enforced the same as the contract of a person. Ibid.

City can not agree with an owner of real estate to submit to arbitration the question of the amount due as betterments, 277.

Power of, to borrow money, 335.

Liability of municipality for acts of mobs; the case of the Pittsburg riots, 341.

A clause in a city charter provided that "nothing in this charter shall be construed as giving power to vote money for any object except for the regular, ordinary and usual expenses of the city." This clause being in force the city council resolved to give a ball and banquet in honor of certain strangers. The resolution of the council and the preparations for the ball were well known, and September 9, 1878, the ball took place. September 27, 1878, certain tax-payers of the city prayed that the city treasurer might be perpetually enjoined from paying the bills incurred. *Held*, that the injunction must issue. Austin v. Coggeshall, 367.

Neither the fact that the city authorities had without oujection given a similar ball in 1875, nor that the complainant tax-payers had waited till the expense had been incurred before filing their bill of complaint, nor that the caterers had acted in good faith and must suffer if the injunction issued, could be urged by the respondent treasurer against the prayer of the bill, as one who contracts with a municipal corporation is bound at his own peril to know the limits of municipal authority. Ibid

City not liable for acts of police officers, 416.

Authority of council to build and maintain piers can not be delegated, 437.

No power in city to offer reward for arrest of criminals, 478.

Is a municipal corporation owning stock in a railroad liable like other stockholders for claims for labor. Query, 239; answer, 419.

MURDER.

[See HOMICIDE.]

NATIONAL BANKS.

[See BANKS AND BANKING; EMBEZZLEMENT.]

NEGLIGENCE.

Contributory Negligence.

Questions of, for the jury, 38.

One entering the premises of another, whether by invitation, or as a mere licensee, is himself bound to exercise ordinary care and diligence, and failing in this and suffering injury, he can not recover. Parker v. Portland Publishing Co., 103.

P having occasion to carry an advertisement to the defendant for publication in its newspaper late at night, found the counting-room closed. He thereupon proceeded to the editorial rooms on the second floor. At the head of the stairs there was a hall; on the right hand the door leading to the editorial rooms, and on the left an elevator entrance with folding doors. P, being a stranger to the premises, and the hall being dark, in trying to find his way fell down the elevator way, the doors of which had been left open, and was seriously injured. *Semble*, that his want of care and prudence having caused the injury he could not recover. Ibid.

In an action for injuries to a servant, caused by the negligence of the master, the contributory negligence of a fellow-servant is no defense. Contributory negligence to defeat such an action must be that of the plaintiff, or of some person for whose acts he is responsible. Stellar v. Chicago &c. R. Co., 131.

In walking on bridge having no side railings, 136.

NEGLIGENCE—Continued.

Where the train of a railroad company starts at the regular time of starting, and the train had been in proper position to receive its passengers a sufficient time to allow all passengers who were ready at the proper time to take seats in the car, and a passenger after the train had started, and while it was in motion, attempted to get on board, and is injured, he can not recover for such injury. Chicago &c. R. Co. v. Scates, 167.

Burning of hotel by sparks from locomotive; contributory negligence, 178.

In walking on railroad track, 199.

Duty of passenger on street car to see that car is stopped before alighting, 218.

Doctrine of "comparative negligence," 336.

Contributory negligence in crossing track, 358.

Negligence of driver of conveyance imputed to passenger, 416.

In General.

The Doctrine of Identification of Passenger with Carrier in Actions of Tort. Article by J. A. Tyng, 24.

Damages caused by domestic animals, 55.

The council of the city, by an ordinance, provided for putting cap logs upon wharves, and prescribed a penalty for its infraction: *Held*, that no civil liability at the suit of a person injured could arise from non-observance of this ordinance, 74.

A person whose land has been injured by the negligent mining of coal beneath it, or whose crops have been injured by heat and smoke from the coke ovens, is entitled to recover for damages so sustained, 75.

Ordinary care and diligence must be used to keep business places, and the usual passage-way to them, safe for the access of all persons coming to them at all reasonable hours, by their invitation express or implied, or for any purpose beneficial to them. Parker v. Portland Publishing Co., 108.

No duty is owed to a mere licensee, and he has no cause of action for negligence in the place he is permitted to enter. Ibid.

Recovery over against third party, 135.

A mercantile agency is not liable for a loss to a subscriber acting upon information collected by its agents and communicated by them to him under his written contract with the agency, wherein it is expressly agreed that the mercantile agency shall not be responsible for any loss caused by the neglect of any of its servants, attorneys, clerks and employees. Under such a contract there is no liability on the part of the agency, even for gross negligence in the collection and communication of information by its agents. Duncan v. Dun, 151.

To render the owner of a vicious dog liable, it is not necessary that he has previously bitten others; it is enough to show that there was within the owner's knowledge a probability that he might do so, 159.

The doctrine of Fletcher v. Rylands, 233.

Degree of care required of owner of dock, 259.

A person using, or dealing with an article dangerous in itself, is bound to use great caution. If he does not do so, and if a third party is injured, the person injured has a right of action against the person dealing with the dangerous article. To support such an action there need be no privity of contract between the party injured and the person by whose breach of duty the injury is caused. Parry v. Smith, 248.

Liability of board consisting of unpaid officers, for negligently allowing a dangerous obstruction to exist in a navigable river which the board were appointed to improve, 301.

A, who had been for some three weeks a patient in the Rhode Island Hospital, paying $8 per week, brought an action against the hospital for damages, alleging severe injuries caused by the unskilfullness and negligence of the surgical interne, a house officer of the hospital. At the trial, a verdict for the defendant was directed by the presiding judge, on the ground that the hospital, being a public charity, was exempt for reasons of public policy from the liability charged. *Held*, that in the absence of legislative provisions granting such exemption, the exemption could not be allowed, public policy requiring that duty assumed should be faithfully performed. Glavin v. Rhode Island Hospital, 329.

Although the attending physicians and surgeons could not be considered as servants of the hospital, yet the hospital was responsible for the exercise of reasonable care in selecting them, and liable for their negligence. Ibid.

Concerning the Degrees of Negligence as Applied to the Case of Common Carriers, 343, 363.

Liability of owner of building for negligence of servants of occupier. Stewart v. Putnam, 350.

Negligence in signing promissory note, 378.

NEGLIGENCE—Continued.

The liability of a landlord for injuries to third persons in consequence of defects in premises leased, ceases with the commencement of the tenant's occupation. But when the landlord has covenanted to repair, he is liable to the same extent that he would be if in actual occupation of the premises himself, upon the principle that by his covenant to repair he holds out to those in the lawful occupation of the premises an implied assurance that they are safe and an implied invitation to use all parts of them. Anderson v. Kryter, 385.

Telegraph company responsible for injury occasioned by the breaking of its poles only by proof of culpable negligence in the construction or maintenance of the line; it is not bound to guard against storms of unusual severity. 418.

Liability for damages caused by freezing of overflowing water, 458.

Liability of mercantile agency for, 499.

Master and Servant.

Negligence of section-foreman, in taking up rail for purpose of repairing track, without putting out proper signals, the negligence of the corporation; plaintiff, a laborer employed by the corporation on a wood-train that was ditched in consequence of the negligence of the section-foreman entitled to recover, 17.

Duty of master to servants as to machinery, etc., 38.

A brakeman on defendant's railroad, was injured while attempting to uncouple cars. It was contended that the defendant was negligent in using a T guard rail, when a U rail would have been safer. Evidence was introduced tending to show that the U rail was safer. It was not shown that U rails were in general use in that locality. The plaintiff was an experienced railroad man, and knew of the character of guard rails in use on the road. *Held*, that there was no evidence of negligence to go to the jury. Smith v. St. Louis etc., R. Co. 51.

When an employee enters upon or continues in the service with the knowledge that machinery of a particular character is in use in that service, he can not recover for injuries inflicted by such machinery on the ground that other and safer machinery should have been provided. Ibid.

Liability of master for injury to servant by defect in rolling stock of railroad, 156.

Relation does no exist between servant of contractor for lighting street lamps and city so as to bar action by former for injury caused by defect in sidewalk, 156.

What are dangers incident to service undertaken by employee, 476.

Muncipal Corporations.

A city is not responsible for injuries caused by destruction of its buildings by unusual and unprecedented storms, 57.

Duty of municipality as to highways governed by surroundings, 75.

Highway must be kept in such order that even "skittish" animals may be employed without danger, 75.

Liability of, for defective highway does not extend to objects outside the traveled way, 216.

When city liable for defect in sidewalk made by adjoining owner, 279.

Duty of city regarding streets and sidewalks, 279, 298.

Liability of cities for injuries caused by snow and ice, 355.

In the absense of express legislative authority, a city can not lawfully grant to a street railroad company the right to operate a steam motor along its streets; and to do so is negligence which will render the city liable for injuries sustained by a person on the street by reason of the operation of the motor. Stanley v. City of Davenport, 392.

Proximate and Remote Cause.

The defendant's bar tender sold liquor to B, and an altercation ensuing, threw a glass at B, which missed him and injured plaintiff; *Held*, that the injury was not the proximate consequence of the sale of the liquor, 159.

Sparks of fire thrown from defendants' engine set fire to combustible materials alongside of the railroad on land adjoining the plaintiff's strip of land, on which were piles of lumber, the property of the plaintiff; the fire was transmitted to combustible materials, leaves, brush, etc., on said strip of land, and by force of a high wind to the lumber. *Held*, that the question of remoteness or proximity was a question of fact for the jury. Lehigh Valley R. Co. v. McKean, 187.

Liability of one person for an injury which though primarily the result of his act is more immediately the result of the intervention of another 281.

NEGLIGENCE—Continued.

Where defendant delivered a quantity of cotton at a wharf in a wet condition, and the plaintiff there received and shipped it while in this condition, and after such shipment the cotton was damaged by continued freezing and thawing: *Held*, that plaintiff was not entitled to recover for damages accruing to the cotton after he had received it and had exercised an independent control over it with a full knowledge of its condition and liability to injury. Brandon v. Gulf City Cotton Press Co., 289.

A was injured by a horse driven by B. The horse was frightened by the overturn of a sleigh to which it was harnessed, and the overturn was caused by a heap of snow and ice wrongfully made and left in a highway by C: *Held*, that the act of C was the proximate cause of the injury, 377.

Railroad Companies.

A railroad company, using the track of another company for the purpose of transporting passengers and property, is liable for damages caused by defects in the road, or through the negligence of the servants or employees of the latter company. This rule applies as well to its own employees as to passengers and freighters. Stellar v. Chicago &c. R. Co., 131.

Rule of liability of railroads for killing stock, 154.

Horse railroad company liable for injury by servants of lessee of its road, 156.

Duty of railroads and passengers; burden of proof, 158.

It is not the duty of a railroad company to provide means by which passengers can get on board the train of cars while it is in motion. It is their duty to construct and maintain a platform at a convenient and suitable place, by which passengers can safely and securely enter the cars, when the train is placed in position for the reception of passengers. Chicago &c. R. Co. v. Scates, 167.

Fires caused by railroads, 177.

Action by master for injury to his servant, 176.

A railroad company is not liable for the negligent mismanagemeut of one of its trains, while used and controlled by an independent contractor, for construction purposes, 241.

Liability of, for injuries to stock; demand of payment, 376.

Negligence in leaving unguarded turntable, 498.

Person thrown from railway train may maintain action whether permanently injured or not, 496.

NEGOTIABLE AND ASSIGNABLE PAPER.

Agreement for value made by holder of note with maker to extend time of payment for definite period beyond its maturity can not bar action on note before expiration of period, 1.

A negotiable note for ten dollars was executed and delivered with blanks preceding the amount, and blank as to place of payment. Afterwards the words and figures were changed by some one so as to make it read for one hundred and ten dollars. A place of payment was also inserted. There was nothing about the appearance of the note to excite suspicion, and it was taken by plaintiff after alteration, before maturity, for a valuable consideration, and without notice of such alteration. *Held*, that no recovery could be had thereon. Knoxville Nat. Bk. v. Clark, 29.

Material alteration in promissory note will avoid it against parties interested, 39.

An instrument in writing purporting to be a promissory note, is none the less a promissory note because it contains a stipulation to pay attorneys's fees if suit be instituted on the note. Howenstein v. Barnes, 48.

Note of corporation though *ultra vires* valid in hands of subsequent indorsee without notice, 58.

A signed his name upon a note. payable to order of maker, after it was signed upon the face, but before it was indorsed by the maker, and before negotiated; *Held*, that it was a note payable to bearer; that the defendant, as indorser, was entitled to notice, 56.

Notes given by a purchaser to a stock broker to cover losses incurred by the broker in stock gambling, on the principal's account, are void, 61.

Where one gives a warranty deed of land, and his title at the time of giving it is called in question and litigated, and a subsequent purchaser, who entertains doubts as to the force and effect of the covenants in his deed, enters into a contract by which he gives his note in contribution towards procuring a release from a litigating claimant, such note is for a valuable consideration, 98.

The maker of a note, who pays it to an indorsee and holder who obtained it by fraud, is discharged from liability thereon to the payee, unless the maker had notice of such fraud; and the discharge extends as well to the original consideration. Alexander v. Horner, 111.

NEGOTIABLE AND ASSIGNABLE PAPER—Continued.

Fraud in making negotiable paper; notice by *bona fide* holder, 116.

Note payable in money can not be varied or changed by contemporaneous oral agreement, 118. 236.

The vendor of a bill or note, notwithstanding he transfers the same by an indorsement without recourse, impliedly warrants, by the very act of transferring, that the prior signatures to the paper are genuine, and so far at least as affected by his dealings with or relations to the paper, that it expresses upon its face the exact legal obligations of all such prior parties. Challis v. McCrum, 149.

An order in the form of an inland bill of exchange not upon any particular fund, is not, before acceptance, an assignment, and does not create any lien in favor of the holder upon funds of the drawer in the hands of the drawee, 200.

Alteration sufficient to invalidate note cured by subsequent erasure so as to restore it as it was originally, 181.

A certificate of deposit, payable to order, of a certain number of dollars "in currency," is negotiable. Klauber v. Biggerstaff, 488.

The word "currency" in a certificate of deposit means "money," and includes bank notes issued by authority of law and in actual and general circulation at their legal standard value. Ibid.

An instrument wherein maker promises to pay "the trustee of etc., church or their collector" is a promissory note, 436.

Compromise of claim; transfer to *bona fide* holder, 437.

Waiver of demand of payment at maturity is waiver of notice of non-payment, 439.

Promissory note payable "to order of myself," 439.

Liability assumed by one who puts his name on back of negotiable paper, 459.

When notice of dishonor seasonable to charge indorser, 474.

Note given to railroad on condition that at certain date its cars "should be running to R," 479.

Construction of promissory note as to time of payments. Query, 99; answer, 139.

Overpayment of note; want of consideration. Query, 99; answer, 140.

A question on the negotiability of a note. Query, 460; answer, 500.

NEW TRIAL.

[See APPEALS AND APPELLATE PROCEDURE; PLEADING AND PRACTICE.]

NOTARY PUBLIC.

Power of, to commit for contempt, 16.

Diligence required of notary in sending notice of protest, 478.,

Should the seal of a notary public stamp the name of the notary to be legal? Query, 419; answer, 440.

NOTICE.

In book of saving's bank depositor binding when, 236

Publication of order of probate court not notice to parties, when, 236.

Notice by publication in newspaper, "published and circulating in the county," 361, 439.

Designation of newspaper under Minnesota laws, 395.

Notice of dissolution of a partnership was published in a newspaper and a copy thereof, with a red line drawn about the notice, was mailed to a dealer residing in another place. *Held*, that it was not sufficient to charge the dealer with notice, 419.

NUISANCE.

[See also, EASEMENTS.]

A house in which unlawful sales of liquor are habitually made is an indictable nuisance, although there is a city ordinance prescribing the penalties for such sales, 173.

OFFICES AND OFFICERS.

[See also, JUSTICE OF THE PEACE.]

Sufficiency of order of board of trustees; authority must be shown on face thereof, 18.

An officer *de facto* is punishable for malfeasance in office the same as an officer *de jure*, 98.

Statute of Maine declaring that if a "public officer', embezzles, etc., he shall be deemed guilty of larceny, and punished accordingly, includes officers *de facto* as well as *de jure*, 98.

Judicial officer not liable for injury occasioned by error of judgment, 122.

The responsibility of a county treasurer, in the absence of any statute enlarging it, is measured by the common law rule applicable to bailees for hire other

OFFICES AND OFFICERS —Continued.

than common carriers and innkeepers. The statutory official bond of a county treasurer does not increase his responsibility; but its office is to secure the performance of his legal obligations. Cumberland Co. v. Pennell, 305.

If, without fault or negligence on his part, a county treasurer is violently robbed of money belonging to the county, it is a valid defense, *pro tanto*, to an action upon his official bond. Ibid.

The powers of police officers commented on, 320.

A sheriff can not be sued jointly with his deputy for a tort committed by the latter alone, nor will an action lie against him after a judgment against the deputy upon which execution has been issued, 322.

Assaults on the police in the execution of their duty. Article from *London Law Times*, 353.

Right of police officers to arrest without a warrant, 461.

Liability of magistrate for imprisonment under excessive sentence, 436.

How must a constable prove his official character? Query, 239; answer, 300, 339.

OFFICIAL BONDS.

[See SURETYSHIP AND GUARANTY.]

OPTION CONTRACTS.

[See CONTRACTS.]

PARENT AND CHILD.

[See also, INFANCY.]

An intention that a gift to a child is an advancement, will not be presumed in the case of a widowed mother under circumstances in which such an intention would be presumed in the case of a father, 61.

PAROL EVIDENCE.

[See EVIDENCE.]

PARTIES.

[See PLEADING AND PRACTICE.]

PARTNERSHIP.

Lien of representatives of deceased partner, 74.

Evidence to charge as partner; construction of agreement, 97.

Estoppel of firm by representations of partner, 97, 157.

Power of partner to bind co-partner, 157.

Contract providing for loan of money and giving portion of profits to lender does not constitute a, 201.

Can not take and hold in its firm name the legal title to real property, 338.

B for many years carried on a business in his own name. He subsequently took M into partnership, but the business of the firm was carried on as before in the name of B only, and was under B's sole control. After M became a partner, B indorsed and accepted bills of exchange without the privity of M. The money realized by the bills of exchange went into the banking account, which was still headed as B's account, but B drew out for his own use a larger sum than the amount realized by the bills. The bills being dishonored, the discounters of them, on learning that M was in partnership with B, sought to make M liable on the bills. *Held*, that M was not liable, B's signature on the bills not standing for the firm, but only for B himself; and that to have made M liable, the plaintiff should have proved that B's signature was meant to represent the firm, and was signed for partnership purposes by the authority of the firm. Yorkshire Banking Co. v. Beatson, 453.

A surviving partner appointed receiver of the partnership affairs at his own instance is not entitled to compensation as such receiver, 419.

What sufficient evidence of, 437.

PASSAGE OF LAWS.

Omission of president of senate to sign bill does not invalidate it, 180.

PATENT LAW.

Patent to John A. Cumnings for improvement in artificial gums and palates, valid, 74.

Said patent not infringed by use of celluloid in the fitting of artificial teeth, 74.

PAYMENT.

Voluntary payment of excessive license fee, when not recoverable back, 78.

By savings bank to one wrongfully presenting depositors book, 236.

Voluntary payment to agents of life insurance company can not be recovered back on ground that agents had no authority to receive premiums, 277.

Note of partner as evidence of, 498.

PENALTY.

Information in the nature of debt will lie in the Federal courts to recover a penalty, although the amount of the penalty is not certain, as where the penalty is for not less than a certain amount, or not more than a certain other amount, 441.

PETITION.

[See PLEADING AND PRACTICE.]

PLEA.

[See PLEADING AND PRACTICE.

PLEADING AND PRACTICE.

[See also, APPEALS AND APPELLATE PROCEDURE; CRIMINAL LAW AND PROCEDURE.]

Affidavit, see, also, *Venue.*

An unsigned affidavit for a transcript of execution is valid if properly sworn to, 459.

Amendments.

Made after opening of case not allowed, when, 218.

When amended petition not allowed under Mo. statute, 279.

A party who commences suit before his cause of action has accrued, can not after it accrues as matter of right file a supplemental petition showing that fact, and where the refusal of the court to grant leave to file such petition works no other hardship than delay and costs, ordinarily such refusal will not be ground for reversal. Smith v. Smith, 427.

Answer. See Defenses.

Conduct of Trial.

Error to coerce jury by threatening to keep them together until they agree, 16.

When expression of opinion is ground for challenge of juror, 161, 278.

Communications between judge and jury after their retirement, when error, 324.

Will experiments made by jurors in absence of others vitiate verdict? Query, 19; answer, 80.

Continuance.

The granting of a continuance is within the discretion of the trial court, which will not be reviewed unless abused. The filing and consideration of affidavits in resistance thereto does not constitute error. Williams v. Niagara Ins. Co., 190.

Inconsistency between general and special verdict, 378.

Costs.

What costs allowed on removal of cause from State to Federal court, 261.

Declaration—Petition.

Wages of vessel and crew recoverable under common courts where special contract means unperformed, 276.

Averments in action for breach of contract, 318.

What averments necessary in action on policy of insurance, 347.

Defenses.

In action for wrongful taking of personal property where complaint alleges the property is of value stated, effect of denial in answer of each and every allegation in the complaint is to admit such statement, 97.

Matter constituting an estoppel need not be pleaded as such to enable party to take advantage of it on trial, 97.

Notwithstanding the provisions of the Iowa code requiring a reply to be filed before noon of the day succeeding that on which the answer was filed, the court has power to allow it to be done at a later day. Williams v. Niagara Ins. Co., 190.

Unanswered pleas not necessarily admitted; answer may be impliedly waived, 337.

Plea that defendant did not undertake *and* promise, good, 418.

Default.

Duty of party to be present when case called for trial, 118.

Depositions.

A deposition is not inadmissible merely for being transmitted in a gummed envelope, if it has not been tampered with, 459.

A deposition does not need a separate *jurat*, if the commissioner who took it certifies that the deponent was duly sworn, 459.

Equity

Requisites of bill to set aside fraudulent conveyance, 260.

In equity pleading, the evidence must be relevant to defense made in answer, 418.

PLEADING AND PRACTICE—Continued.
Instructions.
Use of word *onus* in instructions not error, 478.
Joinder of actions.
When several persons injured by obstruction of water-course may join in action, 96.
Where the maker of a note pays it innocently to a indorsee and holder who obtained it by fraud, and the true payee files a bill in equity to avoid the assignment and compel the maker to pay the note a second time, upon the ground that he had notice of the fraud, the alleged fraudulent indorsee to whom the payment was made is an indispensable party. Alexander v. Horner, 111.
The objection of the non-joinder of necessary parties is not required to be raised by the pleadings; it may be made on the hearing, and acted upon by the court on its own motion. Ibid.
Judgments and Decrees.
In pleading a judgment it is not necessary to allege, in addition to the averment of its recovery, that it still remains in full force, or has not been set aside, vacated or reversed, 436.
Jury. See Conduct of Trial.
Miscellaneous Rulings.
Scire facias on a judgment may be maintained by an assignee, 401.
New Trial.
In action for personal injuries a new trial will be granted to the plaintiff where the damages assessed are too small. £7000 *held* too small in this case. Phillips v. London, etc. R. Co., 125, 365.
Order for new trial may be made on condition, as that party shall not remove cause from that court, 277.
Can not be granted after two previous new trials, except for error of law, 278.
Equity will grant new trial upon newly discovered proof of perjury of witness upon whose testimony verdict was obtained, where such proof is discovered too late to obtained redress at law, 324.
Parties.
When county commissioners authorized to sue in their own names (Ohio), 398.
Process.
Sufficiency of return of, 299.
Issue of *venditoni exponas* after death of judgment plaintiff, 335.
Set-off and Counterclaim.
In action on note debtor can not set-off usurious interest paid by him in successive renewals thereof, 116.
Judgments in cross-actions may be set of, 299.
Judgment in favor of principal may be applied in satisfaction of one against him and his sureties, 299.
Set-off in action by administrator of estate, 398.
United States Courts.
How jurisdiction of Federal court must appear in petition, 1.
Venue.
On application for change of, affidavit must be filed, 398.
Change of venue on condition becomes void if condition not complied with, 398.
Requisites of affidavit for change of, 416.
Verdict. See Jury; Law and Fact.

PLEDGE.
A pledgee of commercial paper, unlike a pledgee of chattels, has, in the absence of a special contract, no right to sell such securities, but must collect them and after paying his own debt account to the pledgor for the balance. Union Trust Co. v. Rigdon, 486.
A corporation held in its hands as pledgee for a debt due to it by R two notes of M for $2,000 and $1,000, both overdue. These notes were placed in the hands of the company under a contract which gave it authority to sell them for the purposes of the debt "at public or private sale." Without having brought suit against M or demanded payment of him, the company wrote to him stating that R was indebted to it in a balance of over $1,300, and offering M the first chance to purchase. A few days later the company surrendered the two notes to M on his paying them $1,342.72, the amount then due from R. *Held*, that this was not a "sale" within the meaning of the contract, but was a compromise and was unauthorized. Ibid.
Evidence that the company made reasonable efforts to sell the notes and failed to find a purchaser, and that said sale and transfer to the maker of the notes was so made without any collusion or actual fraud, and for the best price that could be obtained for them, was irrelevant. Ibid.

PLEDGE—Continued.
Pledge; special contract- delivery up of pledge by pledgee on terms of contract; fraud of pledgor; subsequent *bona fide* transferee for value; two innocent parties, 435.
POLICE.
[See OFFICES AND OFFICERS.]
POSTAL CARD.
[See SLANDER AND LIBEL.]
PRACTICE.
[See PLEADING AND PRACTICE.]
PRESCRIPTION.
[See also, EASEMENTS.]
Prescription and limitation are substantially alike in their legal effects, both conferring title; and the period of prescription follows that of limitation prescribed by statute, 416.
A prescriptive right to flow lands by a mill-dam may be acquired by twenty years' uninterrupted use, 416.
PRESUMPTION.
[See EVIDENCE.]
PRINCIPAL AND AGENT.
[See AGENCY.]
PRIVATE INTERNATIONAL LAW.
[See CONFLICT OF LAWS.]
PROCESS.
[See PLEADING AND PRACTICE.]
PROHIBITION.
Error of court in deciding as to its jurisdiction; writ of prohibition not proper remedy, 279, 375.
PROMISE.
[See CONTRACTS.]
PUBLIC POLICY.
[See CONTRACTS; NEGOTIABLE AND ASSIGNABLE PAPER.]
PUBLICATION.
[See NOTICE.]
RAILROAD MORTGAGES.
[See MORTGAGES.]
RAILROADS.
[See also, COMMON CARRIERS; NEGLIGENCE.]
A railroad company which is a riparian proprietor, is entitled to abstract from the stream supplies of water for its locomotives, 37.
A purchased a ticket, or check, for a certain lower berth on a sleeping car of defendant, from Indianapolis to New York. While en route the car was detached from the train, and A was compelled to take an inferior berth in another car. *Held*, that defendant was liable in damages, 58.
Questions as to the violation of a charter by a railroad in constructing a new line and abandoning its old one can only be raised by the State, except where such inquiry is expressly allowed by law to a private citizen. Kinealy v. St. Louis etc., R. Co., 86.
An action will not lie against a railroad company for damages sustained by the abandonment of an old line, or the withdrawal of its train therefrom, in the absence of a contract between the railroad and the complainant, that the company should continue to maintain its road or to run its trains. Nor will the action lie for breach of duty, unless the party complaining can show that the duty was imposed for his benefit and not for another or for the public, his own advantage being merely incidental. Ibid.
A railroad company has power to guarantee the bonds of another company, 139.
Statute requiring railroads to whistle at crossing; company can not be restrained on ground of nuisance, 479.
RAPE.
Construction of Ohio code as to, 18.
Person under fourteen years; burden of proof, 18.
How jury should be instructed on trial for, 499.
RATIFICATION.
[See SALES; AGENCY.]
RECEIVER.
The appointment of a receiver by a court secures to that court the power to control at its its discretion, all controversies which affect the property placed in his custody as such receiver. Bank v. Simpson, 251.

RECEIVER—Continued.

A court of equity will, on proper application, protect its own receiver, when the possession which he holds, under the authority of the court, is sought to be disturbed. It also has the power to reach parties to actions affecting property placed in the hands of it receivers and compel them to proceed nowhere else than in its own forum. Ibid

Decree appointing receiver of corporation does not revoke authority of agents, when, 277.

Mandamus will not lie against, when, 318.

Effect of appointment of receiver of corporation, 474.

Application for payment out of moneys received by him, by judgment creditor not a party to the action, 496.

Judgment against, not a lien upon property after sale, 497.

RECORDS.

[See also, EVIDENCE; JUDGMENTS AND DECREES.]

Right of citizen to inspection of public records, 361.

A citizen of the United States does not possess at common law an inherent and unlimited right to inspect the books and records of the courts; such a right exists only as allowed by statute or rule of court. *Re* McLean, 426.

REFERENCE.

[See ARBITRATION AND AWARD.]

REHEARING.

[See APPEALS AND APPELLATE PROCEDURE.]

RELEASE.

Is a release of a debt not under seal given upon payment of part a valid defense to action for residue. Query VIII. 59; answer, 380.

RELEVANCY.

[See EVIDENCE.]

REMOVAL OF CAUSES.

To authorize a removal to the Federal Court, under the act of 1875, the requisite citizenship must have existed at the time the suit was commenced in the State court. Rawle v. Phelps, 46.

What costs allowed on removal of cause, 261.

Where an equity case is pending in a State court for several years after issue joined, and has not been brought to hearing in consequence of the neglect of parties to enforce the rules of the court for the taking of testimony: *Held*, that the petition for removal was filed too late when the case could have been first tried under the local laws and practice, at several terms before the filing of the petition. Fulton v. Golden, 286.

Order for removal can not be made upon the application of defendant who has neither answered nor demurred to the petition of plaintiff; there must be a "controversy" to authorize a removal, 497.

REPLEVIN.

On failure of sheriff to find property, order of court committing defendant for contempt improper, 238.

RES ADJUDICATA.

[See JUDGMENTS AND DECREES.]

RESCISSION.

[See CONTRACTS.]

RIPARIAN RIGHTS.

[See WATER and WATERCOURSES.]

SALES.

[See also, AGENCY; CONTRACTS.]

A bill of sale executed in Illinois upon personal property situated in Nebraska, is valid *inter partes*, though intended only as security for advances, and though neither filed nor recorded in Illinois or Nebraska, and though the possession of the property was not delivered. Denny v. Faulkner, 32.

Sale of goods; divisable contract; right of purchaser to reject, 37.

Ratification of sale, 116.

Concurrence of delivery and payment, 495.

SALVAGE.

[See ADMIRALTY AND MARITIME LAW.]

SCHOOLS AND SCHOOL LAW.

A board of education has no power to lease a public school house, 398.

SEDUCTION.

When damages for, may be recovered by parent although no disease or pregnancy followed. 236.

SELF-DEFENSE.

[See HOMICIDE.]

SENTENCE.

[See CRIMINAL LAW AND PROCEDURE.]

SET-OFF.

[See PLEADING AND PRACTICE.]

SHERIFFS.

[See OFFICES AND OFFICERS.]

SHERIFF'S SALE.

[See JUDICIAL SALES.]

SLANDER AND LIBEL.

The defendant was a trader and the plaintiff one of his customers, and as such owed the defendant a sum of money, for the payment of which the defendant applied to him. The plaintiff, being unwell, directed his wife to write to the defendant, sending him at the same time money in part payment of the sum due. The defendant, in reply to this letter, wrote in reference to the balance, on a post-card (which was transmitted to the plaintiff through the post office) the libellous matter complained of. *Held*, that a communication transmitted by means of a post-card is not privileged. Robinson v. Jones, 147.

Letter from one to his representative in parliament containing charges against postmaster not privileged when, 177.

Injunctions to Restrain Libels; article from *Solicitors' Journal* 314.

What publications in newspapers are libels, 356.

Meaning of term "bad" as applied to a married woman, 396.

Slanderous words, not reduced to writing do not constitute a criminal offense. State v. Wakefield 405.

When publication in newspaper *prima facie* a libel, 498.

SLEEPING CAR COMPANY.

[See RAILROADS.]

SPECIFIC PERFORMANCE.

Effect of non-payment of the purchase-money after judgment for, 215.

STATUTE OF FRAUDS.

Signature to contract need not be in writing but may be printed, 41.

Verbal agreement to lease lands for a year to commence from a future day void, 115.

Agreement original or as surety under statute of frauds, 199.

Contract contained in several writings, 258.

Contract not to be performed within a year, 298.

Insufficient memorandum under, 437.

STATUTE OF LIMITATIONS.

[See LIMITATION,]

STATUTES.

[See also, INTERPRETATION; MUNICIPAL BONDS]

Illustration of rule that criminal statutes are to be expounded strictly against an offender and liberally in his favor, 123.

Although when one part of a statute is valid and constitutional, and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable, so that each can stand alone, it is nevertheless not within its province to give to the words of a statute a narrower meaning than they were manifestly intended to bear, in order that crimes may be punished which are not described in language that bring them within the constitutional power. United States v. Steffens, 449.

STOCKHOLDERS.

[See CORPORATIONS.]

STOPPAGE IN TRANSITU.

Right of remains as long as goods are in the hands of carrier, 37.

Is not ended by constructive delivery to vendee, 37.

Shipper can not stop after sale by vendee; stoppage thereafter at peril of master, 75.

SUICIDE.

[See HOMICIDE; INSURANCE.]

SUNDAY.

Sunday laws in the States, 40, 100.

An undertaking on appeal signed on Sunday is valid, 200.

Promissory note given on Sunday void, 198.

SURETIES.

[See SURETYSHIP AND GUARANTY.]

SURETYSHIP AND GUARANTY—Continued.

Discharge of surety by delay in presenting check, 75.

Extension of time for payment of debt; acceptance of interest in advance by mortgagor constitutes an implied contract extending time of payment, 96.

An oral agreement between the payee and the principal maker of a promissory note, that the former will extend the time of payment so long as the latter will pay eight per cent. interest, will not discharge the surety, though made without the knowledge or consent; the agreement not being enforcible on account of the statute of frauds, 101.

An agreement to extend the time of payment of a promissory note, in order to relieve the surety, must be for a valuable consideration and binding upon both parties. A mere agreement to extend the time of payment for an indefinite period of time, and without the payment of interest in advance, would not constitute a sufficient consideration and create a binding agreement, so as to relieve the surety. Cassman v. Wohlleben, 106.

Administrators's bond binding notwithstanding absence of formal conclusion, "then this bond to be void, otherwise to remain in full force," 121.

The sureties in the bond of an officer who is elected annually, are bound only for one year, although no time is specified in the bond and the officer is elected for several years in succession, 123.

B and S, a firm, executed a note for $2,000, with defendant as surety, payable to S, and by him it was indorsed to plaintiff, and on the maturity of the note one-half of it was paid, and it was agreed between S, the payee and indorser, in consideration of ten dollars paid plaintiff, without the consent of defendant, that further time should be given on the remainder. *Held*, that the defendant was released, although the ten dollars was for interest in advance or was usurious. Stilwell v. Aaron, 126.

Where a surety executes a note as maker and the security is so taken by the indorser, he may be treated in the character he has assumed on the face of the transaction, although the holder when he received the security knew the maker had become so for the accommodation of the indorser of the note; but such is not the case where the facts attending the execution of the note indicate that the maker is not to be held as a principal debtor. Ibid.

Action will not lie against sureties on guardians' bond until accounts have been settled in the probate court, 139.

In the absence of any statute upon the subject, a bond voluntarily given to the United States to secure the payment of a debt or the performance of official duty is valid, 155.

But where a statute prescribes the penalty and conditions of a bond, one given in a greater penalty or upon substantially other or different conditions is so far illegal and void, 155.

An alteration in a bond which does not disturb its legal effect will not avoid it. The insertion of the words "are held and firmly bound," where omitted, is immaterial where the language of the bond was amply sufficient to express the obligation intended. Western Bldg. Assn. v. Fitzmaurice, with note, 171.

Where a building contract provides for such changes as might be found "necessary," changes made by order of the architect, not out of keeping with the general style, extent and purpose of the original undertaking, will not release the sureties on a bond given to secure the fulfilment of the terms of the agreement. Ibid.

Surety on note of married woman can not set up her coverture in action against him, 200.

Discharge of surety by giving time to principal, 197.

Where surety on note is to be liable after all legal means to collect it have been exhausted, in action thereon it must be shown that all legal steps were taken; not sufficient to show that they would have been fruitless if taken, 185.

A stipulation in a bond to pay a reasonable attorney's fee to the plaintiff, in case a promissory note is not paid, or other contract is not performed according to its terms, and the party entitled to demand such performance is compelled to enforce it by law, is just and valid. Wilson Sewing Mac. Co. v. Moreno, 225.

In a suit on the bond of a lodge treasurer for moneys collected and not paid over, it is no defense on the part of the bondsmen that, at the time of their signing the bond, the treasurer was a defaulter to the lodge for moneys previously received; that they were not members of the lodge, and did not know of the fact; that the officers of the lodge did know of the fact and failed, as was their duty, to notify the bondsmen, and that they were misled by the lodge having selected him and thereby induced them to believe he had acted faithfully. Roper v. Trustees of Sangamon Lodge, 266.

SURETYSHIP AND GUARANTY—Continued.

Official bond given in a larger penalty than prescribed by law not void, but is valid to amount allowed, 356.

In suit on official bond, sureties bound by previous settlement of officer, 441.

Taking of security from principal not affirmance of liability of sureties on bond, 416.

A surety or an obligation void for coverture is liable, 419.

Liability of co-administrator on joint bond, 458.

SURVIVAL.

[See ABATEMENT.]

TAXATION.

[See also, CONSTITUTIONAL LAW.]

The actual *situs* of personal property and not the domicil of its owner, must determine the State in which it may be taxed. State v. Howard County Court, 25.

Municipal bonds of counties, like other commercial securities, are property in the place where they are found, and taxable there, and the owner who has sent them out of this State into another in good faith, can not be taxed on such bonds in this State, although he may have his domicil in this State. Ibid.

Vendee liable for taxes when in possession under contract to purchase, 117.

Though personal property the primary fund out of which taxes are to be collected, the fact that a delinquent party had personal property which the tax collector could have demanded, andout of which he could have made the taxes, and failed to do so, does not save the delinquent tax-payer from the penalty or release him from the tax, 117.

One seeking an injunction to restrain the collection of taxes, some of which are alleged to have been illegally assessed, will not be entitled to the writ until he has paid or tendered payment of the portion of the taxes legally assessed. 117.

Tax bills for street improvements; power of city authorities must be reasonably exercised for that purpose; evidence to impeach ordinance by showing oppressive exercise of power admissible, 238.

Right of riparian owner to use water is personalty, and taxable as such, 396.

Taxation of personal property pending sale to another, 396.

TAX SALES.

[See TAX TITLES.]

TAX TITLES.

Contestant need not trace title back to government, 97.

Tax sale; deed of trust; junior incumbrances; distribution of proceeds under sale thereunder 117.

Insufficient descriptions will avoid assessments and subsequent tax deeds when, 135.

Neither the board of commissioners of a county nor the county treasurer can refund any moneys upon the failure of tax titles, except as some statute requires it, 134.

Recovery of monies by holders of tax titles, 134.

Delinquent tax lands can not be sold after the year in which they should have been returned, 258.

Defective description in tax judgment, 337.

Devisee of real estate for life can not, by acquiring a tax title thereon, divest title of reversioner, it being the duty of such life owner to keep the taxes paid, 416.

Fact that tax title is obtained before the will making the devise for life was admitted to probate will not change this rule. Ibid.

TELEGRAPH COMPANIES.

[See NEGLIGENCE.]

TENDER.

On sale of grain on 'change, tender of elevator receipts sufficient, 76.

A, a compounding debtor, went to the office of B, a solicitor, to pay the amount of the composition due in respect of a bill of costs. He tendered the proper amount to one of B's clerks, who said that B was out, and refused to accept payment of the amount, as he had "no instructions" to do so. B subsequently sued A for the amount of the debt. *Held*, that the clerk saying he had "no instructions" did not amount to a disclaimer of authority, and that the tender was, therefore, good. Finch v. Boning, 288.

TITLES.

[See also, TAX TITLES.]

Proof of an entry or location of a tract of government land belonging to the United States is sufficient *prima facie* to show a legal title to such tract in the party making the entry or location. (Minn.) 338.

TRADE MARKS.
[See also, CONSTITUTIONAL LAW.]
Trade-mark on exported goods; name acquired from the mark; deception of ultimate purchaser abroad; goods known by a variety of names; fraudulent design, whether necessary; burden of proof; common device, 37.
Effect of registration under English statute, 177.
Trade marks may be acquired by user, without having been used for any definite time, 177.
Distinction between what is common to the trade and peculiar to the manufacture, 177.
When use of, not restrained, 198.
The right to adopt and use a symbol or device to distinguish the goods or property made or sold by the person whose mark it is, to the exclusion of the use of that symbol by all other persons, is a common law right, for which damages may be recovered in an action at law, and the violation of which will be enjoined by a court of equity with compensation for past infringement. United States v. Steffens, 449.
TRESPASS.
[See LICENSE.]
TRIAL.
[See PLEADING AND PRACTICE.]
TRUSTEES SALE.
[See TRUSTS AND TRUSTEES.]
TRUSTS AND TRUSTEES.
Trustee must be present during progress of sale to render it binding on purchaser from auctioneer, 39.
The general trust funds of a charitable corporation are liable to satisfy a judgment in tort recovered against it for the negligence of its officers or servants. Glavin v. Rhode Island Hospital, 329.
Party acquiring from State legal title to lands rightly belonging to another will be treated as trustee for latter, 338.
ULTRA VIRES.
[See also, NEGOTIABLE AND ASSIGNABLE PAPER.]
A New Phase of the Doctrine of Ultra Vires. Article by W. P. Wade, Esq.. 463.
UNITED STATES COURTS.
[See PLEADING AND PRACTICE.]
USAGES AND CUSTOMS.
Usage to show meaning of phrase "rainy day" in bill of lading, 56.
The custom of adjusting insurance losses can not affect the rights of the assured, unless he had knowledge of the custom at the time of the issuing of the policy. Testimony of experts as to this custom is therefore inadmissible. Williams v. Niagara Ins. Co., 190.
USURY.
[See INTEREST.]
VENDOR AND PURCHASER.
Liability of vendee for injury to vendor by vendee's use of land sold, 74.
Personal liability of vendee for mortgage debt, 157.
VENUE.
[See PLEADING AND PRACTICE.]
VERDICT.
[See PLEADING AND PRACTICE.]
WAIVER.
[See INSURANCE; HOMESTEADS AND EXEMPTIONS.]
WARRANTY.
[See also, AGENCY.]
Implied warranty of the fitness of goods for what they are bought, 496.
WATERS AND WATERCOURSES.
Railroad companies entitled to abstract from stream supplies of water for locomotives, 37.
Surface water from hills at regular seasons forms a natural watercourse, 96.
Boundaries in case of water line; how determined between riparian proprietors, 377.
Riparian owner of navigable stream has right to its use; if interfered with injunction the remedy, 396.
A right to use water is personalty and taxable as such, 396.
Remedy of riparian owner for obstructions, 417.
Rights of Riparian Owners. Providence etc. Steam Engine Co. v. Providence etc. Steamship Co. 409.
WILLS.
Can will be set aside because testator has by threats and undue influence been prevented from the execution of a new one as to be desired to do so? 220.
The witnesses to a will signed in a room adjoining that in which the testator lay. Between the rooms there was a door partly open, but the testator could not see them sign. *Held*, not to have been a compliance with the statute which requires that the witnesses sign in the presence of the testator. Mandeville v. Parker, with note by John H. Stewart, 309.
Nuncupative will not valid unless made *in extremis*, 323.
Construction of devise to "my poor relations," 323.
Notes on Wills. Article by W. H. Whitaker, Esq., 483.
Probate of will does not establish validity of devise, but decree does, 476.
Not necessary that subscribing witnesses should see testator sign if he acknowledge will in their presence, 478.
A question on the construction of a will. Query, 379; answer, 440.
WITNESSES.
[See EVIDENCE.]
WOMEN.
A jury of matrons, 94.
WORDS AND PHRASES.
[See INTERPRETATION.]
WRITTEN INSTRUMENTS.
[As to how far written instruments are subject to parol evidence, see EVIDENCE. As to construction of particular words in written instruments, see INTERPRETATION.]